5144.

SUPREME COURT OF THE UNITED STATES.

No. 172.

JOHN F. CALLAN AND MICHAEL P. CALLAN, APPELLANTS,

vs.

CHARLES W. STATHAM AND OTHERS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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DISTRICT OF COLUMBIA, *to wit:*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington on the first Monday of May, being the third day of the same month, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

Present, the Honorable James Dunlop, Chief Judge; James S. Morsell and William M. Merrick, Assistant Judges; William Selden, esquire, Marshal; John A. Smith, Clerk.

CHARLES W. STATHAM, WILLIAM T. SMITHSON, and JAMES G. Hamilton, Complainants, against JOHN F. CALLAN and MICHAEL P. CALLAN, Defendants. } No. 1,165.

In the record of proceedings of the said court, amongst others, are the following, to wit:

Be it remembered, that heretofore, to wit, on the second day of May, one thousand eight hundred and fifty-six, the said complainants, by Davidge and Ingle, esquires, their solicitors, filed in court here the following bill of complaint and exhibits in the words and figures following, to wit:

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the county of Washington, sitting in equity:

The bill of complaint of Charles W. Statham, William T. Smithson, and James G. Hamilton, partners in trade under the name, firm, and style of Statham, Smithson & Co., showeth unto your honors, that your orators recovered on the common law side of your honorable court, at the March term thereof, 1855, three judgments against John F. Callan, one for two thousand dollars damages, to be released on payment of nine hundred and sixty dollars, with interest thereon from the fourteenth day of September, 1853, until paid, and eleven dollars and sixteen cents costs; another for two thousand dollars damages, to be released on payment of nine hundred and seventy dollars, with interest thereon from the twenty-eighth day of May, 1853, until paid, as well as one dollar and seventy-five cents costs of protests, and eleven dollars and sixteen cents costs; and the third for fifteen hundred dollars damages, to be released on payment of six hundred and eighty dollars, with interest thereon from the eighteenth day of September, 1853, until paid, and eleven dollars and sixteen cents costs; all of which will more fully and at large appear by reference to said judgments,

short copies of which are herewith filed as parts of this bill, marked Exhibits A, B, and C.

Your orators further show that the said judgments are still due and unpaid, and that there is no property of the said John F. Callan liable for the same, or any part thereof, by execution or other legal process.

Your orators further show that on the second day of November, 1840, by indenture of that date made between William Robinson, trustee, and Alice Jennings, and the said John F. Callan, lot No. 8, in square No. 456, in the city of Washington, with the appurtenances, was leased and demised to the said John F. Callan for the term of the natural life of the said Alice Jennings, upon and for the yearly rent of two hundred dollars per annum, payable quarterly, and clear of all taxes, repairs and charges, in which said indenture, after a recital that the said Callan had contracted to purchase the fee simple in said property after the decease of the said Alice Jennings for three thousand dollars, to be paid to the said Robinson, his heirs or assigns, within sixty days after her death, it was covenanted and agreed by the said Callan so to purchase, and by the said Alice Jennings, that upon payment of the said sum of three thousand dollars, as aforesaid, Robinson and his heirs should stand seized in fee of the said property to the use of said Callan, his heirs and assigns, until a conveyance should be made, and after such conveyance said Callan should hold free and clear of said Alice C. Jennings, and by the said Robinson that upon payment by said Callan of the said sum of three thousand dollars, and of rents, dues and taxes, and performance of his covenants in said indenture, he, the said Robinson, would convey all his estate and interest in said property to the said John F. Callan, his heirs and assigns, forever; all of which, by reference to said indenture, recorded in Liber W. B. No. 86, folios 107 et seq., one of the land records of Washington county, in the District of Columbia, will more fully appear, and your orators file herewith an abstract of said indenture, marked Exhibit D, and pray that the same may be taken as a part hereof. Your orators show that at the making of said indenture said property was in the tenure and use of said Callan, and has continued so to the present time; that the said Alice Jennings hath departed this life—at what time your orators are not aware; and that after her death, and as required by the aforesaid covenant of said Callan, he paid the said sum of three thousand dollars, and fulfilled his stipulations in said indenture, and thereby became entitled to the fee simple in said property. Your orators are not informed with certainty whether any conveyance was ever made to him by said Robinson; but they are advised that without any such conveyance the absolute fee simple rested in him.

Your orators further show, that after the said lease, the said John F. Callan added valuable improvements to said property, which, as improved, was in the year 1854, and at the time of the deed hereinafter mentioned to Michael P. Callan, worth upwards of fifteen thousand (15,000) dollars.

And your orators show that the said John F. Callan and Sarah A. Callan, his wife, by deed bearing date the sixteenth day of October, 1854, conveyed, or purported to convey, the said property, with the rights and appurtenances to the same belonging, to the said Michael P. Callan, the brother of the said John F. Callan, for the pretended consideration of four thousand nine hundred (4,900) dollars; which said deed was recorded on the fourteenth day of April, 1855, in Liber J. A. S. No. 95, folios 489 et seq., one of the land records of Washington county, in the District of Columbia.

And your orators aver and charge that the statement in said deed of the consideration therein set forth having been paid is utterly false, and that said deed was designed to delay, hinder, and defraud them.

And your orators are advised, that even if said consideration had been paid bona fide, which is utterly denied, the said Michael P. Callan would not be entitled to retain said property as against your orators, but would be treated in a court of equity as a mortgagee to the extent of the debt justly due with interest.

Your orators aver, that when the said last mentioned deed was executed, the said John F. Callan was indebted largely and beyond his means of making payment, and represented himself as insolvent, and that the said Michael P. Callan knew the same. And further, that when said deed was executed, a creditor, who claimed a lien by virtue of a judgment which he had obtained, had threatened to levy, or was about to levy, upon said property, whereupon said judgment was paid and satisfied by the said John F. Callan, and the said deed was shortly afterwards executed.

Your orators further aver and charge, that said deed purports to convey not only Lot. No. 8 in square No. 456, but also the interest of said John F. Callan in all other lots and premises in the said city of Washington, which interest your orators believe to have been considerable and exceeding in value three thousand dollars.

In tender consideration whereof, and forasmuch as your orators can have adequate relief only in the premises only in a court of equity, where matters of this value are properly cognizable, to the end, therefore, that the said John F. Callan and Michael P. Callan may be made parties to this bill, and may upon their several and respective corporal oaths answer all and singular the matters aforesaid as fully and particularly as if the same were here repeated, and they and each of them were distinctly interrogated

thereto; and more especially that they may set forth and discover whether or not any conveyance was ever made by the said William Robinson, his heirs or assigns, or any or either of them, to the said John F. Callan for lot No. 8, in square No. 456, or any portion thereof; if any such conveyance was made, what are the contents and date thereof, and that the same may be produced; whether any portion of the sum of four thousand nine hundred dollars mentioned in the deed of October 16th, 1854, to Michael P. Callan was ever paid by him to John F. Callan, and if so, how much, and at what times, and in what manner; whether the said John F. Callan does not now occupy a house on said lot, or a portion of such house, and if so, whether he has paid rent for the same since the execution of said deed, and what rent, and when the same was paid; whether the said John F. Callan, since the execution of said deed, has received any rent for any portion of the improvements on said lot No. 8, in square No. 456; and what lots or premises other than lot No. 8, in square No. 456, were conveyed by said deed; and what was the interest of said John F. Callan in any and all lots and premises in said city of Washington at the time of the execution of said deed, and the value of such interest; and that the said deed from John F. Callan and wife to Michael P. Callan, of October 16th, 1854, may be decreed to be null and void; or that if the said consideration of four thousand nine hundred dollars, or any portion thereof, was a bona fide consideration, then the said Michael P. Callan may be adjudged a mortgagee of the property thereby conveyed to the extent of such bona fide consideration; and that for the payment of your orators' said debts a sale may be decreed of said lot No. 8, in square No. 456, and other property conveyed by said deed to Michael P. Callan, when such other property shall be discovered; and that your orators may have such other and further relief as the nature of their case may require.

May it please your honors to grant unto your orators the United States writ of subpœna to the said John F. Callan and Michael P. Callan directed, commanding them to appear at a day to be named, &c., &c.

And your orators will ever pray, &c.

DAVIDGE & INGLE,
Sol's for Compl'ts.

Exhibits A, B, and C, filed with Complainants' Bill.

Circuit Court Washington county, D. C.

No. 301.—Imparlances. March Term, 1855.

STATHAM, SMITHSON & HAMILTON
vs.
JOHN F. CALLAN.

5th May, 1855.—Judgment. Damages $2,000 and co. Dam's to be rel'd on pay't of $960 with int. from 14th Sept., 1853, till paid.

Costs..... $11 16

Test: JNO. A. SMITH, *Cl'k.*

No. 302.—Imparlances. March Term, 1855.

SAME
vs.
SAME.

5th May, 1855.—Judgment. Damages $2,000 and co. Dam's to be rel'd on pay't of $970 with int. from 28th May, 1853, till paid. Protest, $1 75.

Costs..... $11 16

Test: JNO. A. SMITH, *Cl'k.*

No. 303.—Imparlances. March Term, 1855.

SAME
vs.
SAME.

5th May, 1855.—Judgment. Damages $1,500 and co. Dam's to be rel'd on pay't of $680 with int. from 18th Sept., 1853, till paid.

Costs..... $11 16

Test: JNO. A. SMITH, *Cl'k.*

Exhibit D, filed with Complainants' Bill.

Deed of Lease dated Nov. 2, 1840.—Recorded in Liber W. B. No. 86, folios 107, &c.

WILLIAM ROBINSON and ALICE JENNINGS
to
JOHN F. CALLAN.

Lot No. 8 in square No. 456, in the city of Washington. Annual rent of $200, payable quarterly, clear of all taxes, repairs, and charges. For natural life of Mrs. Alice Jennings. John F. Callan covenants to pay $3,000 to said Robinson, trustee, for purchase of the fee simple within sixty days after death of said Mrs. Jennings. Mrs. Jennings covenants that upon such payment said trustee shall stand seized to use of said Callan in fee simple until conveyance made, and after such conveyance said Callan shall stand seized free and clear of said Alice Jennings, her heirs and assigns. Robinson covenants, upon payment of said three thousand dollars as aforesaid, and of all rents, dues, and taxes, and performance of said Callan's covenants, to convey to said Callan in fee simple.

True abstract.

Test: JNO. A. SMITH, *Cl'k.*

Thereupon subpœna issued as prayed, and was returned "summoned both" by the marshal of the District of Columbia, and the said John F. Callan and Michael P. Callan, by John C. Brent, esquire, their solicitor, appeared in court here, and filed their answer in the words following, to wit:

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the county of Washington, sitting in equity:

The answer of John F. Callan to the bill of complaint of Charles W. Statham, William T. Smithson, and James G. Hamilton, against him and Michael P. Callan, in this court exhibited.

Your respondent admits that it may be true that they the said complainants did recover against him, as security for William B. Hart, the three judgments as stated in their bill of complaint, and that said judgments may be yet due and unpaid.

This respondent admits that about the 2d November, 1840, the indenture as stated in said bill of complaint was made between William Robinson, trustee of Alice C. Jennings and himself, and that the conditions thereof were as is recited in said bill, and as are of record in Liber W. B. No. 84, folios 107 et seq. He also admits that the said Alice C. Jennings hath departed this life some two or three years since, but denies that he, said respondent, ever paid the $3,000 in fulfilment of the stipulations of said indenture between said William Robinson and himself.

This respondent further states, that no conveyance of the property described in said indenture was ever made by said Robinson to said respondent, and asserts that without such conveyance the absolute fee simple to the same is not vested in him.

This respondent admits, that after the said lease he did add improvements to said property, but denies that the property when so improved is valuable to the amount stated in said bill of complaint, said improvements being plainly and temporarily made with a view to the contingency of a subsequent removal or rebuilding of the same, or a forfeiture of the lease. This respondent avers and asserts, that at the time of making the deed to M. P. Callan referred to in said bill of complaint the said property so improved was not worth over the amount for which it was sold to said M. P. Callan, particularly as the heirs of the said Alice C. Jennings and of Mr. Robinson had refused, and now refuse, to convey the said lot 8, in square 456, even upon the payment of the $3,000, as stipulated in the said indenture, but require a forfeiture of the improvements, or the payment of a much larger sum than the $3,000, before they would consent to make such conveyance. So that the said Michael P. Callan has to incur the risk of such forfeiture, or of the payment of the extravagant demands of the heirs, (several years' interest having also accumulated upon the debt,) before their consent to make a title can be procured. This respondent therefore avers,

that in case of a failure to obtain or enforce a conveyance of said property by said heirs, said Michael P. Callan must sustain the entire loss of the $4,900 paid by him for said respondent's equitable interest in said improvements, which, under circumstances, is considered full value for them.

This respondent admits the deed of October 16, 1854, conveying the said property to the said Michael P. Callan for the consideration of $4,900, and declares that the said sum of money, to wit, $4,900, has been fully paid by the said Michael P. Callan, and denies that said conveyance was intended to delay, hinder, or defraud said complainants in the recovery of their just debts, or that it did so. He further admits, that at the time of making said deed to Michael P. Callan this respondent was largely indebted, and presumes that said Michael P. Callan knew (as did many others) of the heavy losses he (said respondent) had met with, and through which he was struggling. He also admits that a judgment had been obtained against him as security for John Pettibone, and that an execution was issued against Pettibone, and the debt was subsequently paid through, but not by your respondent, but no execution was issued against this respondent, and he was advised, and believed it to be true, that the money could not have been made out of the lot 8, in square 456, or its improvements, under the circumstances which surrounded it.

This respondent admits that the deed from himself to said Michael P. Callan, as referred to in the bill, did convey to said Michael any interest which said respondent might be supposed to have in any other lots in the city of Washington or elsewhere, and denies that that interest was considerable or over $3,000, said conveyance, as to the above referred to interest, being made for other reasons, viz:

This respondent had been advised that some conveyances of small lots made by him to several worthy persons were defectively made, and in order to do justice to these purchasers, and that the loss might not from that cause revert to this respondent, and the property be lost to the grantees, this conveyance was made to Michael P. Callan, his brother, in whom he had confidence, so that should it so happen that these conveyances, or any of them, were imperfect, the said Michael might convey the property to these purchasers by a good and valid deed, but not a particle of ground has thereby passed to the said Michael P. Callan, nor is it now believed ever will under the deed, except what was this respondents' equitable interest in lot 8, square 456.

This respondent further admits that he does occupy a house on said lot, for the rent of which, as well as for the rent of the lot and improvements, he is responsible to said Michael P. Callan, and that since the execution of said deed of October 16, 1854, he, said

respondent, has collected some of the rents upon the said premises, their occupants being sub-tenants to him.

JOHN F. CALLAN.

JOHN C. BRENT, *Sol'r for Respondent.*

Subscribed and sworn to before me this 2d June, 1856.

JAMES LAURENSON, *J. P.*

To the Honorable the Judges of the Circuit Court of the District of Columbia for the county of Washington, sitting in Equity:

The answer of Michael P. Callan to the bill of complaint of Charles W. Statham, William T. Smithson, and James G. Hamilton against him, the said Michael, in this court exhibited.

Your respondent says he knows nothing of the matters and things in controversy between said complainants and his brother, John F. Callan; that he has read the answer of said John F. Callan to the bill of complaint, and confirms and reiterates so much of said answer as concerns this respondents, referring your honorable court to the same, for a true and correct statement of the facts and circumstances connected with the purchase of lot 8, in square 456, as referred to in said bill of complaint from the said John F. Callan.

Your respondent, therefore, prays that the bill may be dismissed so far as he is concerned, with costs, &c.

M. P. CALLAN.

JOHN CARROLL BRENT,
Sol'r for Respondent.

Subscribed and sworn to before me, this 2d June, 1856.

GEO. McNEIR, *J. P.*

And the said complainants, by their solicitors aforesaid, at the July rules of said court, filed a general replication to said answers, in the words following, to wit:

The replication of Charles W. Statham, William T. Smithson and James G. Hamilton, complainants, to the answers of John F. Callan and Michael P. Callan, defendants.

These complainants, saving and reserving to themselves all and all manner of exceptions, &c., for replication to the answers of said defendants, say, that they do and will aver, maintain, and prove their said bill to be true, and sufficient in the law to be answered unto by said defendants, and that the answers are very uncertain, evasive and insufficient in the law to be replied unto by the repliants, without that, &c.

DAVIDGE & INGLE,
For Complainants.

And the complainants, by their solicitors aforesaid, file in court here the following interrogatories and notice, (interrogatories copied in page 21.)

STATHAM, SMITHSON & Co.
v.
JOHN F. CALLAN et al. } No. 1,165.—Chancery.

JOHN CARROLL BRENT,
Solicitor for Defendants.

Take notice, that we have this day filed in the above cause interrogatories to be propounded to witnesses, to be produced on behalf of the complainants, to which you are at liberty to file cross-interrogatories.

DAVIDGE & INGLE,
Sol'rs for Compl'ts.

July 9, 1856.

And said cause was continued regularly until the eleventh day of August, one thousand eight hundred and fifty-six, when the following agreement was filed.

STATHAM, SMITHSON & Co.
vs.
JOHN F. CALLAN et al. } No. Chancery.

It is agreed that in the above entitled cause a commission may issue to Richard H. Clarke, esq., to take testimony therein upon the interrogatories filed, and such other interrogatories as may be propounded in writing at the examination of witnesses. The defendants, John F. Callan and Michael P. Callan, shall be at liberty to put cross-interrogatories. All testimony shall be so taken, that the cause shall stand for hearing at the ensuing October term.

August 9th, 1856.

JOHN CARROLL BRENT,
Sol'r for Def'ts.
DAVIDGE & INGLE,
For Compl'ts.

Thereupon the following commission issued:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Richard H. Clarke, esq., greeting:

Know ye, that you are appointed commissioner to examine evidences in a cause depending in the circuit court for the county of Washington, in the District of Columbia, between Charles W. Statham, William T. Smithson, and James G. Hamilton, complainants, and John F. Callan and Michael Callan, defendants.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk, to attend the execution of this commission, that, at such time and place as to you shall seem con-

venient, you cause to come before you all such evidences as shall be named or produced to you by either the complainants or defendants, as per agreement, and interrogatories hereto annexed, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and that you cause notice to be given to the parties or their attorneys of the execution of this commission before you execute the same, and having reduced the depositions of the witnessess so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the judges of the said circuit court, with all convenient speed.

Witness the Honorable James Dunlop, chief judge of the said court, the first day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Issued this eleventh day of August, 1856.

JNO. A. SMITH, *Cl'k.*

Interrogatories annexed to said Commission.

STATHAM, SMITHSON & Co.
vs.
JOHN F. CALLAN et al. } No. 1,165.—Chancery.

Interrogatories to be propounded to witnesses to be produced on the part of the complainants:

1st. Are you or not acquainted with the parties to this suit, or either, and which of them; if yea, how long have you known them, and each of them?

2d. Do you or not know the value on or about the sixteenth day of October, 1854, and at present, of lot 8, in square No. 456, and its improvements, situated in Washington city, D. C., at the north-east corner of E street north and 7th street west? If you answer yea, state what was and is said value, and state the particulars of your said knowledge.

3d. Do you or not know whether John F. Callan, on the sixteenth of October, 1854, was the proprietor of any real estate or interested in any real estate in said city in addition to lot 8, in square 456? If you answer yea, state fully the particulars of said knowledge, and the sources thereof.

4. Do you or not know who has collected the rents of or paid the taxes on lot 8, in square No. 456, in said city, or any portion thereof, since the sixteenth of October, 1854, or at any time since said date? If you answer yea, state who has so paid rent or collected taxes.

5. Do you or not know who has occupied the improvements on said lot, or any part of them? If you answer yea, state who has

so occupied, and at what rent, and to whom said rent has been paid, and by whom receipted for.

6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

DAVIDGE & INGLE,
Sol'rs for Compl'ts.

And said cause was continued regularly until the ninth day of March, one thousand eight hundred and fifty-eight, when the commission was returned with the following depositions, to wit:

STATHAM, SMITHSON & Co.
vs
JOHN F. CALLAN & al.
} In Chancery.—No. 1,165.

At the execution of the annexed commission, issued out of the circuit court, for the county of Washington, in the District of Columbia, sitting as a court of chancery, and to me directed, and empowering me to examine evidences in the cause depending in the said court, between Charles W. Statham, William T. Smithson and James G. Hamilton, complainants, and John F. Callan and Michael P. Callan, defendants, I, Richard H. Clarke, commissioner therein named, having, on the fifteenth day of September, 1856, at my office, in the city of Washington, pursuant to previous notice thereof given to the said parties, taken the oath annexed to the said commission, did proceed then and there, in the presence of Walter D. Davidge, solicitor for the complainants, and of John Carroll Brent, solicitor for the defendants, to take the following depositions, to wit:

George S. Gideon, a witness of lawful age, produced on the part of the complainant, being duly sworn and examined to interrogatories filed the commissioner by the complainants, and herewith returned, deposes and says:

To the first interrogatory. Yes, I know the defendants, and Mr. Smithson, one of the plaintiffs, but not the other plaintiffs; I have known Mr. Smithson about one year, and the Callans about twenty years.

To the second interrogatory. I am acquainted with the property mentioned in the interrogatory, the lot No. 8 in square No. 456, and in my opinion the said property, embracing the improvements, was on the 16th day of October, 1854, worth about fifteen thousand dollars, and I believe that in October, 1854, it would have sold for more than that sum. Property has declined since October, 1854. I have known said property about thirty years, and it is situated

in one of the business thoroughfares of the city, and opposite the General Post Office Department.

To the third interrogatory. I do not know anything about the matters inquired of.

To the fourth interrogatory. I do not know.

To the fifth interrogatory. The dwelling-house has been in the occupation of John F. Callan, and still is in his occupancy. The store is occupied by a son of Mr. John F. Callan. Mr. Alexander Adamson occupies another portion, as does also Jacob Bigelow. As to the occupancy of the rest of the property I know nothing.

To the sixth interrogatory. I know nothing.

GEO. S. GIDEON.

Cross-examined by Defendants' Counsel.

1st X interrogatory. State whether you have ever examined the interior of the buildings; whether you know their character for permanence and convenience, and their probable cost.

Answer. I have never particularly examined the interior, though I have been in them. The main buildings are substantial and well built, so far as I can judge. As to their convenience I know nothing of my own knowledge, but judge they are convenient from the fact of their having been long occupied as dwellings. I think the entire improvements on lot 8 in square 456, the property in question, must have cost at least ten thousand dollars.

2d X interrogatory. Do you own property in that neighborhood, or have you been engaged in business in the neighborhood?

Answer. I am interested in property in that neighborhood *or have you been engaged in the business in the neighborhood.*

Answer. I am interested in property in that neighborhood and square; have never been engaged in business there; and have lived there all my life, with the exception of five years. I am now living there.

3d X interrogatory. In order to use the property to the best advantage as a business stand, would it not be necessary to improve it at great expense?

Answer. I think the buildings now there as well adapted for the business now carried on there as any others that could be put up on the property, and the dwelling-houses have always been occupied. I think the principal buildings have been built there eighteen or twenty years.

4th X interrogatory. In you answers as to the value of the property, do you not assume that the title is free from question?

Answer. Certainly, I do.

5th X interrogatory.. Suppose you were informed that John F. Callan's title depended on his payment of stipulated sums within a certain time, which he had failed to pay within the times, and it

was uncertain whether he could procure a title, what would be your estimate of the property under those circumstances?

Answer. I have but one answer to give. If the title were not good I would have nothing to do with it. If I wanted to purchase I would take legal advice as to the title, and my course would be guided by the answer I should receive from counsel.

GEO. S. GIDEON.

William A. Bradley, a witness of lawful age, produced on the part of the complainant, being duly sworn and examined to interrogatories filed with the commissioner by the complainants and herewith returned, deposes and says:

To the first interrogatory. I know the defendants, but I do not think I know the complainants.

To the second interrogatory. I think the property mentioned in this interrogatory ought to bring fifteen thousand dollars, and would have commanded that price on the 16th day of October, 1854. Property was higher than now. I have known the property for many years, and I consider its position a very valuable one. Mr. Kibbey, a capitalist, said he would give fifteen thousand dollars within a few days for the property.

To the third interrogatory. As to the matters inquired of I know nothing.

To the fourth interrogatory. I know nothing.

To the fifth interrogatory. I know nothing.

To the sixth interrogatory. I know nothing.

(Signature waived by the parties.)

R. H. C.

Wm. A. Bradley Cross-examined by Defendants' Counsel.

1st X interrogatory. State whether you have ever examined the interior of the buildings; whether you know their character for permanence and convenience, and their probable cost.

Answer. I have never critically examined the interior of the buildings, although I have been in all of them. They appear to me to be well arranged for the purposes for which they are used, and the three principal buildings, I think, are well built. I should judge the improvements cost about ten thousand dollars in 1854; I should value them at that sum.

2d X interrogatory. In order to use the property to the best advantage as a business stand, would it not be necessary to improve it at great expense?

Answer. I do not think that any expenditure of money would add to the value of the property beyond the interest of the expenditure. In other words, I do not think the improvements would be judicious.

3d X interrogatory. In your answers as to the value of the property do you not assume that the title is free from question?

Answer. Certainly.
(Signature waived by the parties.)

R. H. C.

September 17th, 1857.—Samuel Bacon, a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn, in answer to the interrogatories filed, answered:

To the first interrogatory. I know the two Messrs. Callan, and have known them for twenty years. I do not know the complainants.

To the 2d interrogatory. I am acquainted with the property mentioned in this interrogatory, and I think it was worth on the 16th of October, 1854, sixteen thousand dollars, and is worth that now. I would be willing to give that for it. I have known said property ever since the houses were built, and I consider its location one of the best in that whole neighborhood, being near the Patent Office and Post Office.

To the third interrogatory. I know nothing about that.

To the fourth interrogatory. I have no knowledge of those matters inquired of.

To the fifth interrogatory. Mr. Callan occupies one house—I mean John F. Callan; his son occupies the corner store, and Mr. Adamson the bookstore on 7th street, and I think Mr. Chapman occupies the house next to Mr. Callan.

To the sixth interrogatory. I know nothing.

SAM'L BACON.

Cross-examined by Defendants' Counsel.

1st X interrogatory. State whether you have ever examined the interior of the buildings; whether you know their character for permanency and convenience and their probable cost.

Answer. I have never examined the interior critically; I have been in them, however. I do not know their character for permanency or convenience, but they appear to be fairly built houses. I know nothing of the probable cost of the improvements. I am not mechanic enough to judge.

2d X interrogatory. In order to use the property to the best advantage as a business stand would it not be necessary to improve it at great expense?

Answer. I think the property would pay a very good interest as it stands; at the same time I think the property might be further improved to advantage.

3d X interrogatory. In your answers as to the value of the property do you not assume that the title is free from question?

Answer. Certainly.

SAM'L BACON.

September 17th, 1857.—Alfred Chapman, a witness of lawful

age, produced on behalf the plaintiffs, having been duly sworn, in answer to the interrogatories filed, answered:

To the first interrogatory. I know Mr. Smithson and Mr. John F. Callan; the former for three or four years, the latter since the spring of 1851.

To the second interrogatory. I have little or no knowledge whatever of the value of the property in question.

To the third interrogatory. I do not know.

To the fourth interrogatory. I occupy one of the dwelling-houses on the lot in question, the house next to the one occupied as a dwelling by Mr. John F. Callan. I do not know who pays the taxes; but since the spring of 1851, when I rented the house I live in, I have paid the rent to Mr. John F. Callan.

To the fifth interrogatory. Mr. Adamson occupies a book-store on 7th street; Mr. Bigelow occupies a room above the drug-store; Mr. John F. Callan's son, I understand, is the owner of the drug-store, and Mr. John F. Callan himself occupies the other residence. Mr. John F. Callan's son is named James N. Callan. I do not know to whom any of the tenants other than myself pay the rents. I pay my rent to John F. Callan, who receipts for the same. I pay at the rate of $400 per year. I do not know what rent the others pay.

To the sixth interrogatory. I do not know anything further.

ALFRED CHAPMAN.

September 17th, 1857.—Jacob Bigelow, a witness of lawful age, produced on behalf of the plaintiffs, having been duly sworn, in answer to the interrogatories following, answered as follows:

1st interrogatory. Do you or do you not know who have occupied the improvements in lot 8, in square 456, since the 16th of October, 1854? If you answer yea, state who have so occupied, and at what rent, and to whom said rent has been paid, and by whom receipted for; and if receipted for by John F. Callan, whether he proposed to act as agent or in his own right; and if he did so profess to act as agent, when was the first time?

I hired two rooms in the building over the drug-store twelve years ago, and occupied them with my partner, Mr. Peugh, three years, when our partnership was dissolved, and I continued to occupy the premises till the present time, at the same rent originally agreed on, which was one hundred dollars a year; this was by a verbal agreement with Mr. John F. Callan, never reduced to writing, and never referred to since. The rooms north of me are occupied by Mr. Peugh. Since Peugh and Lewis left, Gregory, and Smith, and Adamson have occupied different portions of said improvements to the present time. I know the rent of none, save my own. I do not know to whom they paid their rent since the 16th of October, 1854, nor do I know any the matters in-

quired of in the interrogatory save my own. I have paid my own rent from first to last to John F. Callan, who receipted for it in his own name. He continued to receive and receipt for the rent after the 16th of October, 1854, in the same manner as he did before.

2d interrogatory. Did he or did he not state to you that the said premises had been transferred to him by Michael P. Callan; if yea, when did he first so state?

Since the payment of my last rent, for which I have a receipt to the fifteenth of August, and within a few days past, I have heard Mr. Callan say that the property had been transferred to his brother Michael P. Callan, and that he collected the rents for him. This was the first intimation he communicated to me relative to any change of ownership. This communication was made to me by Mr. Callan within two weeks, certainly. My rent was settled with Mr. John F. Callan up to the 15th of August last by other transactions between Mr. Callan and myself, which entitled me to a receipt to that time, which receipt I obtained. Those other transactions, to which I allude, were with John F. Callan individually.

J. BIGELOW.

September 21, 1857.—Samuel C. Espey, a witness of lawful age, in behalf of the complainants, having been duly sworn, made the following answers to the interrogatories propounded to him by complainants.

1st interrogatory. State fully and particularly all you know as to the solvency or insolvency of John F. Callan on the 16th day of October, 1854, or prior thereto.

Answer. I was one of the proprietors of the drug store on the corner of E and 7th streets, with Mr. Morrison. We purchased the stock in trade of the drug store in September, 1852, of John F. Callan. I am not positive, but it was either in the fall of 1852 or the spring of 1853 that Mr. Callan was standing in the door of our store; it was after the breaking of Potomac Savings Bank, an institution in which Mr. Callan was President, and in which he was largely interested. While we were in conversation at the store door on E street, two of Mr. Callan's daughters came out of the residence on E street, and adjoining the store; he bowed to them as they passed, and then turned to me, with tears in his eyes, and made these remarks: "I am ashamed to look at my children. I am a ruined man; I am not worth a dollar in the world." These were the words, as well as I recollect. He then added, "all I have in the world is gone." He then returned into his dwelling.

Cross-interrogatories propounded to same witness by defendants.

1st. How soon after the breaking of the Potomac Savings Bank did this conversation occur?

Answer. It was not long after the closing of the bank. I cannot recollect the precise period of time.

SAM. C. ESPEY.

October 16th, 1857.—Aloysius L. Newton, a witness of lawful age, produced on behalf of the plaintiffs, having been duly sworn, to the subjoined interrogatories deposeth and saith:

1st interrogatory. Were you present at the execution and delivery of a deed from Mary Ann Nalley to Nicholas Callan for part of lot 7, in square 456; lot No. 22, in square 687; and parts of lots 16 and 17, in sq. 464, in this city?

Answer. I was present at the execution, but know nothing of the delivery of the deed. I saw the deed, had it in my hand, and saw that it was a deed from Mary Ann Nalley to Nicholas Callan.

2d interrogatory. State when and where said deed was executed.

Answer. It was about the 13th or 14th December, 1855, at the then residence of Mrs. Nalley.

3d interrogatory. Who were present at the execution of said deed?

Answer. Mr. David Saunders and Mr. George McNeir, justices of the peace, Mrs. Nalley, and myself.

4th interrogatory. By whom was the purchase money paid to Mrs. Nalley?

Answer. It was paid by myself.

5th interrogatory. By whom, when, and where was it paid to you?

Answer. By Mr. John F. Callan, on the day of the execution of the deed (I think) at my place of business.

6th interrogatory. Did you act as the agent of Mr. John F. Callan and Mrs. Nalley?

Answer. I acted for both parties.

7th interrogatory. Was the money paid to you by Mr. John F. Callan as his own money, or as the money of any other person?

Answer. There was not a word said by Mr. Callan as to whose money it was, or where it came from.

8th interrogatory. Who negotiated the sale of the property by Mrs. Nalley?

Answer. The negotiation was commenced by a correspondence between Mr. John F. Callan and Mrs. Mary Ann Nalley.

9th interrogatory. Look at this paper shown you, and state whether it is the handwriting of John F. Callan.

Answer. It is in the handwriting of Mr. John F. Callan. Letter marked A. L. N. No. 1. (Copied in page 40.)

10th interrogatory. Look at these letters marked 2, 3, 4, 5, 6,

7, and 8, and say in whose handwriting the same are, and how they came into your possession. (Copied in page 43 et seq.)

Answer. They are all in the handwriting of John F. Callan, and were handed to me by Mr. Charles Keenan, one of the executors of Mrs. Nalley, myself being the other.

11th interrogatory. Did Mr. John F. Callan, in any interview or interviews with you or with Mrs. Nalley, in your presence, claim that the absolute deed from him to her was a mortgage, and not a sale?

Answer. In the interviews between Mr. Callan and myself some three or four months before the deed from Mrs. Nalley to Mr. Nicholas Callan was executed, he said that this conveyance from him to Mrs. Nalley was a collateral security for a certain sum, about forty-seven hundred dollars; he had always intended to redeem that property, and thought it was so understood by Mrs. Nalley; that he had made a proposition to redeem it to Mrs. Nalley, and she had declined the proposition, claiming it to be a bona fide sale and purchase, and Mrs. Nalley did in fact claim it to be an absolute purchase throughout, and to the end of the transaction, Mr. Callan claiming the opposite; that a mortgage by way of collateral security, subject to redemption. Mr. Callan, after we had several interviews, requested me to act for him in effecting a settlement. If I recollect right, I told Mr. Callan that I did not know that I would be acceptable to the other party, but subsequently to that Mrs. Nalley agreed that I should act. The correspondence was frequent between the parties from this time. It broke off at one time, and I thought it was at an end, till Mr. Callan (John F.) notified me, one or two evenings previous to his bringing me the amount of money, that he had accepted Mrs. Nalley's proposition, and asked if I would attend to it, and I told him I would. He brought me the money; I carried it to Mrs. Nalley's residence. The deed was executed in my presence.

12th interrogatory. Was or was not the deed from Mrs. Nalley to Nicholas Callan in the handwriting of John F. Callan?

Answer. It was partly a printed deed. (The original deed filed in the cause being shown to witness by consent of counsel.) I think this is the identical deed, and the blanks are filled up in the handwriting of Mr. John F. Callan.

13th interrogatory. From the beginning to the end of your connection with this matter, did Mr. John F. Callan ever mention Nicholas Callan as having any interest, present or prospective, in the property; did he always treat with you on the basis that the property was his own, subject to the mortgage to Mrs. Nalley?

Answer. I do not recollect Mr. John F. Callan mentioning his brother Nicholas's name in connection with the matter, nor do I recollect of his speaking of the property as his own.

14th interrogatory. Did Mr. John F. Callan treat with you the

subject as one man would treat with another in relation to property which was his own?

Answer. He dealt with me as though he had an interest in the property, though subject to an incumbrance in favor of Guista.

A. L. NEWTON.

Exhibit A. L. N. No. 1, *referred to in the foregoing Examination of A. L. Newton.*

WASHINGTON, *Sept.* 17*th*, 1855.

MRS. M. A. NALLEY:

Your note of this morning *reach* me just as I was about to call upon you, and although its contents surprised me, yet I am glad you put your determinations on paper, as they cannot be misrepresented.

You are mistaken that I applied to "purchase" the property you name. My application was to take up my note now in your hands, for which I pledged that property as security. This I never supposed you would refuse; and the attempt to refuse it now is the result of advice of one who pretends to be your friend, but who certainly does not understand the subject, and misleads you.

I never sold the property, but in assigning it as security, I had to put it out of the reach of others. We never bargained for it; never fixed upon any price for it; so that the transfer, as security, was without the conditions necessary to constitute a sale. I would not have been willing to transfer and give for $4,700 all the property I could control, and you might not have been willing to receive it in full payment. You have more than once, and so have your friends, stated that the property was not worth the debt. The deed itself was, at your father's request—and he acted for you—changed to $5,000, which is not the true amount due.

I reject your proposition, while I regret that you have been advised to refuse to do me justice. You aim to take from my children what I thought would be safe in your hands, while it also protected you from loss.

You value the property now at $6,140 cash; a year or so ago, you thought it would not bring more than $3,000.

The McCalla house is mortgaged for $2,000, and some interest in arrears; this will reduce the value, to say $4,000, which will not pay my note. Candidly, I am offering more money for its redemption than you can otherwise get for it; but I make the offer for the sake of domestic peace, and to remove the imputation that I have not done justice to you, but your letter will sufficiently disprove any such charge. I am willing now to do more than justice, by allowing you all the rents you have received for 3 years, instead of the interest upon the loan, about 8⅓ per cent., instead of 6.

I solicit you for your own sake to look at this thing yourself. I

am much mistaken if you will not think differently of it, if left to your own sense of justice. It is a plain business matter, and need not excite you.

Strangers trust each other; is it possible that we cannot confide in each other?

It is important to us both that this business be now settled, as the mortgage must be foreclosed, and I hope to hear from you again, and finally, about it, at your earliest convenience.

I am, very truly,

J. F. CALLAN.

Exhibit A. L. N. No. 2, *referred to in the foregoing Examination of A. L. Newton, page* 37.

WASHINGTON, *9th Oct.*, 1855.

DEAR MADAME: I have yours of 1st, and reject the proposition it contains. I offered to take up my note in your hands, by paying you $4,700 in cash, and allowing you all the rents you have received to pay the interest upon the note, the taxes, &c. You first wanted a premium of $1,460, and in your last asked $800 more than is justly due you.

You were entitled to 6 per cent. interest for the $4,700, and nothing more, and I cannot understand why my note, with security, in your hands for its payment, should be worth more to you than other investments you have without security, which yield you but six per cent., payable annually.

Your course compels me to resort to other means to procure that justice which you deny me, and I suppose I may consider all correspondence at an end. I am notified that the mortgages are to be foreclosed immediately, when you may have reason to regret my propositions.

Respectfully,

J. F. CALLAN.

Exhibit A. L. N. No. 3, *referred to in the foregoing Examination of A. L. Newton, page* 37.

WASHINGTON, *Oct.* 26, 1855.

DEAR MRS. NALLEY: I am very reluctant to avail myself of the law for a settlement of the issue between you and myself, although I am assured by the best legal adviser that I can have no difficulty before a court of chancery in recovering in a few days my property, upon the payment of my note with legal interest, and I therefore write you again upon the subject.

Considering my former propositions as rejected, I now propose to give you $5,000 (for my note of $4,700 and a deed,) payable as follows, viz: $1,000 in cash, and a new note for $4,000, endorsed by S. A. Peugh, with interest, payable quarterly. I give this

$300 over and above what I owe, for an amicable settlement, rather than lose time, &c., in attending courts, although I have no doubt of the result of such a suit. I wish an immediate answer.

Respectfully,
J. F. CALLAN.

Exhibit A. L. N. No. 3, *referred to in the foregoing Examination of A. L. Newton, page* 38.

WASHINGTON, *Oct.* 26, 1855.

DR. MRS. NALLEY: In reply to yours of *of* this morning, I have only to say that the offer to give you $300 over and above the amount of my note was in consideration of the time on the $4,000, so as to be allowed an opportunity to convert the property, or a part of it, into cash within the time stated; but if I am required to pay the amount in cash, I fall back upon the true amount, $4,700.

The note I offer would be taken in any purchase you wish to make, as so much money; it will be paid long before 'tis due, or could be converted into cash at any time it was required. As we did not agree, of course the offer and acceptance are not considered to be in existence.

Resp'y,
J. F. CALLAN.

Exhibit A. L. N. No. 5, *referred to in the foregoing Examination of A. L. Newton, page* 38.

WASHINGTON, 3*d Nov.*, '55.

MRS. M. A. NALLEY: Some stranger called at the store to-day and handed me my note due to you, $4,500, for which I gave the deed as security. As he could not explain himself, I declined receiving it, until I could ascertain from you if my proposition had been accepted.

Please me know on Monday; and as it will be easier and more expeditious to use a friend between us than to write, I propose to ask Lewis Newton's aid (with your concurrence) to arrange our misunderstanding.

Respectfully,
J. F. CALLAN.

Exhibit A. L. N. No. 6, *referred to in the foregoing Examination of A. L. Newton, page* 38.

WASHINGTON, *Nov.* 26, 1855.

DR. MRS. NALLEY: Having acceded to the proposition as made by Lewis Newton, I wish to know upon what day I may send the deeds for your signature; they are now ready.

Upon receiving the deeds, I will pay the $5,000, as agreed upon, in cash.

Respectfully,
J. F. CALLAN.

Exhibit A. L. N. No. 7, *referred to in the foregoing Examination of A. L. Newton, page* 38.

MRS. NALLEY: In order to make the deed correspond exactly with your note, I had to have it written over again, which I could not get done to-day in time to send you; but, on Monday or Tuesday it will be ready again, and will be then sent. The rent, of course, is yours till the deed is signed. I am glad this matter is at last ended.

Resp'y,
J. F. CALLAN.

Exhibit A. L. N. No. 8, *referred to in the foregoing Examination of A. L. Newton, page.* 38.

WASHINGTON, 3*d Dec'r*, 1855.

DR. MA'M: As requested by your note of this morning, I send the deed to be submitted to some friend for examination. When you have examined it, and I am so informed, I will send the two magistrates to take your acknowledgment. One of these magistrates will hand you the $5,000 in exchange for the deed and my notes, ($4,500 and $200;) all the other conditions will also be complied with, as regards the rents, as you suggest.

Very truly,
J. F. CALLAN.

Mrs. M. A. NALLEY.

October 22d.—A. L. Newton X-examined:

1st X interrogatory. Did Mrs. John F. Callan tell you, after the negotiations with Mrs. Nalley had been broken off, that she objected to regretted the failure of the negotiation, as Mr. Callan had found a friend who would take the property off Mrs. Nalley's hands by purchasing it?

Answer. There might have been a conversation between Mrs. Callan and myself in relation to that matter in dispute, but I cannot say that I remember that any conversation of that kind took place before the entire settlement of the matter. She might have said to me that Mr. C. had found a friend to assist him, and I think some such conversation took place, but I cannot say when, or how such conversation was brought about.

2d X interrogatory. Did not J. F. Callan tell you, when he called upon you the second time, that Nicholas Callan, having an interest in the Guista mortgage, had determined to purchase the property to quiet all existing difficulties?

Answer. I do not recollect that Mr. Callan said to me that his brother Nicholas had an interest in the Guista mortgage, or had an idea of purchasing an interest in the mortgage or property. Mr. J. F. Callan frequently spoke to me about the Guista mortgage, and I had the knowledge of the existence of such a mortgage.

3d X interrogatory. Are you acquainted with the handwriting of Mrs. Nalley? If so, state whether the letters now shown you, marked "J. F. C.," six in number, are in the handwriting of Mrs. Nalley, (copied page 49 et seq.)

Answer. I am acquainted with her handwriting, and believe they are all in her handwriting.

A. L. NEWTON.

Exhibit J. F. C. No. 1, *referred to in the foregoing Cross-examination of A. L. Newton, page* 48.

WASHINGTON CITY, *Sept.* 17*th*, '55.

Mr. J. F. CALLAN.

DEAR SIR: In consequence of my feeble health I have determined to give you an answer in writing. I will find it less exciting. In reply to your proposition to purchase the house and lot on E street, the lot in square 687, and the area of ground in square 454, all in this city, I respectfully inform you that I am willing to take the assessed value of the property, $6,104, in cash.

I am satisfied this price is much less than the real value of the property; but believing the money can be invested so as to yield me as large a return, without the trouble of tax-paying, insuring, and repairs, I make you the offer.

Please advise me by note of your acceptance or rejection of this proposition at your earliest convenience, as in the latter event I have another friend to whom I shall propose to sell on the same terms.

Truly yours,

M. A. NALLEY.

Exhibit J. F. C. No. 2, *referred to in the foregoing Cross-examination of A. L. Newton, page* 48.

MONDAY MORNING, *Oct.* 1*st*.

DEAR SIR: For the sake of the domestic peace to which you allude in your note of the 17th inst., I have concluded to offer the property to you for $5,550 cash. This is my final proposition, made after due deliberation, and upon my own convictions, without the advice of any "stranger" or person whomsoever.

Very respectfully,

M. A. NALLEY.

Exhibit J. F. C. No. 3, *referred to in the foregoing Cross-examination of A. L. Newton, page* 48.

WASHINGTON CITY, *Oct. 26th,* '55.

DEAR SIR: In answer to yours of this evening, I hasten to reply as you request, that, reciprocating your desire for an "amicable settlement," I accept your proposition of $5,000, but not the terms as stated, as I must have the cash in hand or first-rate stocks, capable of being converted into cash at any time.

Yours, truly,

MARY A. NALLEY.

Exhibit J. F. C. No. 4, *referred to in the foregoing Cross-examination of A. L. Newton, page* 48.

WASHINGTON, *Dec. 3d,* '55.

DEAR SIR: I, in answer to yours of Dec. 1st, which is in reply to a former communication of mine, agreeing to take five thousand dollars in cash for the property conveyed to me by your deed, provided, as expressly stated in my note, the rents due are paid to me before the signing and sealing of any paper on my part, and also the entire sum of five thousand dollars, and the deed shall have been submitted to some friend for examination.

Yours,

MARY A. NALLEY.

Exhibit J. F. C. No. 5, *referred to in the foregoing Cross-examination of A. L. Newton, page* 48.

WASHINGTON, *Dec. 4th,* 1855.

DEAR SIR: Yours of yesterday, conveying a deed, was duly received. I desire that the amount of rent due may be also handed to me at the same time the $5,000 is given me by one of the attesting magistrates, as you suggest, so that nothing may be left unadjusted between us. There is due for rent—

For the area of ground.....	$59 85
For house in E street.....	52 60
	$112 45

Making $5,112 45 due me, with this understanding: I will sign the deed to-morrow (Wednesday) at 2 o'clock, at which time please send the magistrates to my residence.

Yours, &c.,

MARY A. NALLEY.

Mr. J. F. CALLAN.

Exhibit J. F. C. No. 6, referred to in the foregoing Cross-examination of A. L. Newton, page 48.

WASHINGTON, 12 *Dec.*, 1855.

DEAR SIR: Your note of yesterday was received, and your apology accepted. I will be ready to sign the deed to-morrow (Thursday) 2 o'clock.

Yours,

MARY A. NALLEY.

October 16th, 1857.—Personally appeared Joseph C. Lewis, a witness of lawful age, produced on behalf of the plaintiffs, who, having been duly sworn in answer to the subjoined interrogatories, made answer as follows:

1st interrogatory. Are you the agent of the Mutual Benefit Life Insurance Company of Newark, New Jersey, doing business in their behalf in this city?

Answer. I am.

2d interrog'y. Were you so engaged during the year 1846?

Answer. I was.

3d interrogatory. Did John F. Callan procure a policy in said company on the life of Mrs. Alice C. Jennings, of Norfolk, Va.? If yea, state when he obtained said policy, and the amount thereof.

Answer. He did procure a policy on the life of Mrs. Alice C. Jennings in August, 1846, for three thousand dollars, for the term of her natural life.

4th interrogatory. Did he subsequently and after the death of Mrs. Jennings apply to you for the amount of such policy, and did you pay such amount, or any amount; and if so, what?

Answer. We paid twenty-eight hundred ninety-one dollars and thirty-two cents for that policy in the month of May, 1851. The reason why the full amount was not paid was because there was a premium note, and by the rules of the company the money is not to be paid until the expiration of ninety days after the proof of the death; and when immediate payment is required by the party, the interest for the time is deducted. Under the rules of the office the annual payment may be made one-half in cash, and the other half by the note of the insured, bearing interest, which is called a premium note, and is renewed from time to time, and the amount of the note and interest for prepayment is deducted from the sum payable by the company on the death of the insured. In a Mutual Insurance Company the party insuring becomes a member of the company, and entitled to a proportion of the profits; and in this case the amount of the principal was paid, after deducting the premium note and discount for prepayment, and allowing to the insured the amount of his proportion of the profits.

JOSEPH C. LEWIS.

Certificate of the death of Alice C. Jennings admitted in evidence.

(Copy.)

STATE OF VIRGINIA,
City of Norfolk, to wit.

Before me, G. B. Cooke, a justice of the peace for the said city, this 20th day of May, A. D. 1851, personally came William Seldon, doctor of medicine, who being duly sworn according to law, declared that he was the family physician of Mrs. Alice C. Jennings, deceased, late of Norfolk; that he attended her in her last sickness; that she died in the city aforesaid on the night of Tuesday, the 13th day of May, 1851, of apoplexy, as this affiant believes.

(Signed) WILLIAM SELDON, *M. D.*

Sworn to and subscribed before me the day and year before written.

(Signed) G. P. COOKE, *J. P.*

This is to certify that I have compared the above copy with the original, and find it a true copy in every particular.

JOS. SHIPMAN.

Newark, N. J., October 17th, 1857.

SHERMAN
v. } In Chancery.—No. 1,192.
CALLAN et al.

The within is admitted as evidence of its contents, as if the same had been duly proved before the commissioner.

Oct. 20, 1857.

W. S. COX,
For Def'ts.

October 22d, 185 .—Charles Keenan, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to interrogatories propounded to him, answered as follows:

1st interrogatory. State how you were related to Mrs. Mary Ann Nalley, and whether you were familiar with her business affairs.

Answer. I was her father, and I was familiar with a great many of her business matters, such as were of importance, or in which I could assist her.

2d interrogatory. State whether Mrs. Nalley always regarded and treated the conveyance to her by J. F. Callan of the property in dispute in this cause as a bona fide sale thereof; and if so, how she happened to retain J. F. Callan's note in her favor, and whether she claimed any property in said note after the conveyance to her?

Answer. She always claimed the deed as a bona fide deed for the property, and a complete settlement of the matter between her and Mr. John F. Callan, and a perfect satisfaction of her claims against J. F. Callan. The note by some means or other was mislaid in her possession. There was never any intention on her part to make any other use of said note, but to return it to Mr. J. F. Callan. I believe it was returned. Before the conveyance from Mrs. Nalley to Nicholas Callan, I sent that note back to J. F. Callan by a man in the gas office, and on his refusing to receive it, the man brought it back to me, and I returned it to Mrs. Nalley, and afterwards Mrs. Nalley sent it to Mr. Callan, (J. F.) I think it was after all was settled between Mrs. Nalley and Mr. J. F. Callan, that either I or Mrs. Nalley returned the note to J. F. Callan.

CHAS. KEENAN.

X Examined.

1st X interrogatory. Did Mr. J. F. Callan answer you in writing when he returned the note to you?

Answer. Mr. J. F. Callan never wrote anything to me on the subject.

CHAS. KEENAN.

OCTOBER 23*d*, 1857.

Re-examined in Chief.

3d interrogatory. State who negotiated with John F. Callan for his deed to Mrs. Nalley of October 15, 1852.

Answer. I think it was myself.

4th interrogatory. State whether or not Mrs. Nalley refused to receive a deed of trust and required an absolute deed.

Answer. Yes, she did. I told Mr. Callan that she could not have a deed of trust, but required a deed, which he said he would give. He said that he had some doubts in his mind whether that house in E street would be sufficient to cover Mrs. Nalley's debt, and that he would add in the deed a lot on Capitol , and area of ground near and east of 7th street. I did not ask him for this. I was the only person who negotiated in the matter. Mr. Callan had no conversation directly with Mrs. Nalley.

5th interrogatory. Was there any secret trust that that deed should be considered a mortgage instead of an absolute deed?

Answer. Never on my part.

6th interrogatory. State whether or not Mr. J. F. Callan subsequently offered to pay Mrs. Nalley interest, as he had done before the deed, and she refused the same.

Answer. Yes, he sent the interest there one morning, and she refused to receive it; I sent the money back; this was three or four months after the execution of the deed.

Cross-examined again.

2d X interrogatory. You state in your answer to the 4th interrogatory that you told Mr. Callan that Mrs. Nalley would not accept a mortgage, but required a deed. Please say whether Mr. Callan had proposed a deed of trust, and what was its character?

Answer. Mr. Callan did propose a deed of trust; I do not recollect its provisions.

3d X interrogatory. Did Mr. J. F. Callan at the time of the execution of the deed to Mrs. Nalley, or since, claim that the said deed was a mortgage, and that he should, or had a right to, redeem under it?

Answer. He never did in my presence; I believe we never had any conversation on that point. Mr. Callan and Mrs. Nalley afterwards, or a long time before the execution of that deed, that I am aware of.

4th X interrogatory. When you carried the money back, mentioned in the 6th interrogatory, state whether Mr. J. F. Callan said to you that it was intended as interest due on the debt from him to Mrs. Nalley?

Answer. When I took it back he came down stairs himself, and I handed it back just as it came, telling him that Mrs. Nalley perfectly satisfied as it was, and that he did not owe her anything. He said, "I thought this matter stood as a deed of trust, and that he might pay the interest as usual." I said "No, sir, she could not do that." I then left. This was the last offer made by Mr. Callan to pay the interest, that I am aware of.

CHAS. KEENAN.

September twenty-third, 1857.—James Towles, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories, deposeth and saith:

1st interrogatory. Did you build any of the houses on John F. Callan's lot, at the corner of E and 7th streets?

Answer. I did build the corner house, and the one adjoining thereto on E street.

2d interrogatory. State what was the cost of building those houses, and whether they were constructed with the view of permanency, or with a view to the contingency of a forfeiture of the ground or removal of the building materials?

Answer. I think the cost of building the two houses which I built amounted to about five thousand two hundred dollars. The buildings were erected perfectly plain; no buildings could be more so. The houses were built strong and substantial. In 1854 (the fall of that year) the houses were considerably impaired and deteriorated, probably to the amount of five hundred dollars, and from settling and from wear and tear. It will cost something very con-

siderable to keep those houses in good repair. The property is of very little value, except as a business stand, no property in the neighborhood of the public offices being of much value for purposes of private residence; the lower story alone being valuable, even as a business stand. On account of the contracted space, these houses could not be rendered very valuable for business purposes. I am not able to answer the last part of the question without further reflection.

3d interrogatory. What would be the value of the building materials of the three houses in case of their removal?

Answer. I do not think they would be worth more than a thousand or twelve hundred dollars.

JAMES TOWLES.

Sept. 23d, 1857.—Samuel A. Peugh, a witness of lawful age, produced on behalf of the defendants, having duly sworn, in answer to the subjoined interrogatories, deposeth and saith:

1st interrogatory. State what have been your relations for some years past with John F. Callan, as to intimacy and knowledge of his business affairs?

Answer. My social and business relations with Mr. Callan commenced in 1844, and have continued of a very intimate character ever since. My confidential intimacy with Mr. Callan commenced about the year 1851, and since then has continued of a very intimate and confidential character.

2d interrogatory. Can you state his condition as to solvency or insolvency in the fall of 1854?

Answer. I can state his condition only from interviews with himself, and from those interviews I never received the impression that he was insolvent, but, on the contrary, that he would pay all that he owed. Mr. Callan stated to me his means of payment and his resources, which he expected to make available, and with which he expected to pay his debts.

3d interrogatory. Are you acquainted with the improvements on lot 8 in square 456? If so, state the character, condition, and value of the whole property in the fall of 1854.

Answer. I am acquainted with a large portion of the improvements on that lot, viz: with that part occupied by the store and the buildings on 7th street, and Mr. Callan's residence, next to the store and E street, and those buildings I have regarded as of a very temporary and slight character, the ceilings having often fallen down, and those buildings on 7th street even scarcely tenantable in winter, and always leak in wet weather. Their present condition is very much out of repair. It is difficult for me to estimate the value of the property in the fall of 1854, from the following circumstances: After Mrs. Jennings's death, Mr. Callan had failed to comply with an existing agreement to pay a certain amount

of money, some two or three thousand dollars; and his failing to comply with his part of the agreement, by making a tender of the money, was such as to leave his title to the property in great jeopardy. Mr. Callan expressed great doubts in his being able to procure a title, in consequence of his failure to make that payment or tender, and of a refusal of the Jennings heirs to make a deed to him for the property; he apprehended a total loss of the property. I have known Mr. Callan to refuse to make repairs on the property, in consequence of his apprehensions as above stated. In these conversations Mr. Callan manifested intense anxiety, and I was convinced of his sincerity. Under these circumstances I could not look upon the property as anything more than a mere contingency, and would not have purchased it at all.

4th interrogatory. State the value of this property as a business stand.

Answer. The stand itself is a very eligible one, but circumstances of an unfavorable character have arisen to depreciate the value at least fifty per cent. These circumstances are two-fold, viz: First. On account of the failure of Espey and Morrison, which occurred about the year 1853. Second. In consequence of the failure of the Potomac Savings Bank, with which Mr. Callan was connected, and the increase of drug stores in the adjacent neighborhood.

5th interrogatory. Are you acquainted with the fact of the purchase by Nicholas Callan from Mary Ann Nalley, of the house on part of lot No. 7 in said square? If so, state how and by whom the money was raised for said purchase, and for whose use said purchase was made.

Answer. I have a knowledge of the fact, that the house that Mrs. Nalley owned was purchased by Mr. Nicholas Callan, and the money raised for the purchase of the same was upon Mr. Nicholas Callan's note, and discounted at the Bank of Washington. As security, to indemnify me, Mr. Nicholas Callan gave a pledge to the bank to sell the property at a very short notice, I think thirty days. It was purchased, so far as my knowledge extends, by Mr. Nicholas Callan for himself. That note remains yet unpaid, as I am informed by the cashier of the bank. Mr. Nicholas Callan has made repeated efforts to sell the property, and now holds a suspended proposition of mine for the purchase of the same. Mr. John F. Callan had not, from my knowledge, any interest, present or prospective, in the affair.

6th interrogatory. State at what time the Potomac Savings Bank was closed.

Answer. It was in the autumn of 1852.

SAM'L A. PEUGH.

Samuel A. Peugh cross-examined by Plaintiffs' Counsel.

1st X interrogatory. Have you any interest in the result of this cause? if yea, state it particularly.

Answer. The only interest I have in the matter arises from my having endorsed the note discounted at the Bank of Washington. I have been in treaty with Mr. Nicholas Callan for the purchase of the house and property conveyed by Mrs. Nalley to him at the value of sixty-five hundred dollars, but have now abandoned all such negotiations.

2d X interrogatory. Do you hold the written agreement of Nicholas Callan for the sale to you of the said property?

Answer. I do not.

3d X interrogatory. Are your means of knowing the condition of John F. Callan in the fall of 1854, as to solvency or insolvency, based exclusively upon what he told you?

Answer. My knowledge is derived only from my interviews with Mr. Callan, and what he exhibited to me.

4th X interrogatory. How you know that after the death of Mrs. Jennings John F. Callan failed to comply with the agreement to which you refer in response to the third interrogatory?

Answer. By frequent communications with Mr. Callan on the subject.

5th X interrogatory. In answer to the fifth interrogatory you state that Mr. Nicholas Callan has "made repeated efforts to sell the property, and now holds a suspended proposition of mine for the purchase of the same." State why, in answer to the first X interrogatory, you have stated the abandonment of all negotiations for the property.

Answer. I failed to get money I expected. The abandonment of the negotiation took place between the 23d of September, 1857, when I last testified, and the present time.

6th X interrogatory. Who received the money from the Bank of Washington on the note of Nicholas Callan, endorsed by you and discounted at said bank? and confine yourself to your personal knowledge.

Answer. I have no personal knowledge.

7th X interrogatory. Do you know by whom the money for the purchase of the property from Mrs. Nalley to Nicholas Callan was paid?

Answer. I have no personal knowledge.

8th X interrogatory. Have you then any personal knowledge of the purchase of said property by Nicholas Callan?

Answer. I have no personal knowledge, except my personal knowledge of having endorsed the note in question, seen the deed, and had conversations with Mr. Nicholas Callan previous to and

in relation to the purchase. I endorsed the note for Mr. Nicholas Callan for that purpose.

S. A. PEUGH.

September 24th, 1857.—George H. Plant, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the following interrogatories deposeth and saith:

1st interrogatory. Did you build any of the houses on lot No. 8, square 456? If so, state their character; whether they were intended to be permanent improvements, or were built with a view to their future removal or improvement, or reconstruction, and on what terms were they built?

Answer. I built the brick-work, Mr. Towles the carpenter's work, on the corner house, first; I also did the brick-work on the 7th street improvements; I also built the third dwelling-house on E street; they are ordinary houses, 4th class houses. I understood the corner house to be intended as a permanent improvement, but lightly built; the 7th street two-story improvements temporary; they were built 4th class houses with a view to their future completion or remodelling, in consequence of Mr. John F. Callan's doubts whether he should finally lose again the property, concerning which he seemed to entertain great apprehensions. They were built for part cash and part in trade. I think the corner house could be built for twenty-three hundred dollars in the way it was built; this includes the 7th street improvements. I do not recollect the actual cost; they might have cost less. I have always understood to within two years past that Mr. Callan entertained those apprehensions about the title. While a sewer was constructing in that square, after the houses were built, Mr. Callan was much in doubt whether it was worth while to have that sewer run through his property or not in consequence of those apprehensions alluded to above. My idea was all along that they should be built as lightly and temporarily as possible in order to make them pay, Mr. Callan not knowing that he would not lose the property. The second house on E street I do not consider worth any more than the corner one; the third house is little better finished, and is worth about twenty-five hundred dollars. I should think that up to the fall of 1854 the corner house had deteriorated about four hundred dollars, and the other two about three hundred dollars each.

2d interrogatory. What do you suppose the whole property, including the three houses and lots, would have sold for at public auction in cash in October, 1854, especially while there were doubts as to the title?

Answer. If the title were good I would not give more than eleven thousand dollars; I would have given that. If the title were bad I would not give two thousand dollars; I would not give any-

thing for a lawsuit. The improvements I do not consider worth more than six thousand nine hundred dollars, either in the fall 1854 or now, and the ground about forty-five hundred dollars. Nobody besides the builder could know how temporarily they were built, which was more for show than permanency. The property is of very little value except as a business stand; I do not think it is as valuable as a business stand now as it was four years ago, in consequence of the building of fine stores in the neighborhood.

3d interrogatory. Have you heard of the purchase of the property by Michael Callan from John F. Callan in October, 1854; if so, was or was not the consideration of that purchase in your judgment an ample one under the circumstances?

Answer. I have heard of the purchase from Mr. Callan; I think it was a very unwise purchase on the part of Mr. Michael Callan, unless he purchased simply to get back his money from Mr. John F. Callan, a debt from the latter to the former.

GEORGE H. PLANT.

William Douglas, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories propounded by the defendants' counsel, deposeth and saith:

1st interrogatory. State whether you have acted as public assessor, and at what time.

Answer. I have acted as public assessor in 1855 and '56, and am at this time.

2d interrogatory. Are you familiar with the property of John F. Callan, at the corner of E and 7th streets; if so, what was the value of the same in 1854?

Answer. I have been acquainted with that property for the last six years, having done a great deal of repairing there for Mr. Callan. The corner house has been for a long time and is in a dilapidated condition; the repairs which I did on it having been necessary to keep it from tumbling to pieces. Mr. Callan stated to me several times that it was not worth while to make any extensive improvements there, since he did not know whether he could get a title. I think the improvements at the corner, embracing the 7th street improvements, worth in October, 1854, not more than three thousand dollars. I could not tell the value of the other houses without examining them.

WM. DOUGLAS.

Sept. 25th, 1857.—James Adams, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories, deposeth and saith:

1st interrogatory. State what you know in reference to a note of Nicholas Callan and Samuel A. Peugh, discounted at the Bank of Washington the 13th of December, 1855, for five thousand dol-

in relation to the purchase. I endorsed the note for Mr. Nicholas Callan for that purpose.

S. A. PEUGH.

September 24th, 1857.—George H. Plant, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the following interrogatories deposeth and saith:

1st interrogatory. Did you build any of the houses on lot No. 8, square 456? If so, state their character; whether they were intended to be permanent improvements, or were built with a view to their future removal or improvement, or reconstruction, and on what terms were they built?

Answer. I built the brick-work, Mr. Towles the carpenter's work, on the corner house, first; I also did the brick-work on the 7th street improvements; I also built the third dwelling-house on E street; they are ordinary houses, 4th class houses. I understood the corner house to be intended as a permanent improvement, but lightly built; the 7th street two-story improvements temporary; they were built 4th class houses with a view to their future completion or remodelling, in consequence of Mr. John F. Callan's doubts whether he should finally lose again the property, concerning which he seemed to entertain great apprehensions. They were built for part cash and part in trade. I think the corner house could be built for twenty-three hundred dollars in the way it was built; this includes the 7th street improvements. I do not recollect the actual cost; they might have cost less. I have always understood to within two years past that Mr. Callan entertained those apprehensions about the title. While a sewer was constructing in that square, after the houses were built, Mr. Callan was much in doubt whether it was worth while to have that sewer run through his property or not in consequence of those apprehensions alluded to above. My idea was all along that they should be built as lightly and temporarily as possible in order to make them pay, Mr. Callan not knowing that he would not lose the property. The second house on E street I do not consider worth any more than the corner one; the third house is little better finished, and is worth about twenty-five hundred dollars. I should think that up to the fall of 1854 the corner house had deteriorated about four hundred dollars, and the other two about three hundred dollars each.

2d interrogatory. What do you suppose the whole property, including the three houses and lots, would have sold for at public auction in cash in October, 1854, especially while there were doubts as to the title?

Answer. If the title were good I would not give more than eleven thousand dollars; I would have given that. It the title were bad I would not give two thousand dollars; I would not give any-

thing for a lawsuit. The improvements I do not consider worth more than six thousand nine hundred dollars, either in the fall 1854 or now, and the ground about forty-five hundred dollars. Nobody besides the builder could know how temporarily they were built, which was more for show than permanency. The property is of very little value except as a business stand; I do not think it is as valuable as a business stand now as it was four years ago, in consequence of the building of fine stores in the neighborhood.

3d interrogatory. Have you heard of the purchase of the property by Michael Callan from John F. Callan in October, 1854; if so, was or was not the consideration of that purchase in your judgment an ample one under the circumstances?

Answer. I have heard of the purchase from Mr. Callan; I think it was a very unwise purchase on the part of Mr. Michael Callan, unless he purchased simply to get back his money from Mr. John F. Callan, a debt from the latter to the former.

GEORGE H. PLANT.

William Douglas, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories propounded by the defendants' counsel, deposeth and saith:

1st interrogatory. State whether you have acted as public assessor, and at what time.

Answer. I have acted as public assessor in 1855 and '56, and am at this time.

2d interrogatory. Are you familiar with the property of John F. Callan, at the corner of E and 7th streets; if so, what was the value of the same in 1854?

Answer. I have been acquainted with that property for the last six years, having done a great deal of repairing there for Mr. Callan. The corner house has been for a long time and is in a dilapidated condition; the repairs which I did on it having been necessary to keep it from tumbling to pieces. Mr. Callan stated to me several times that it was not worth while to make any extensive improvements there, since he did not know whether he could get a title. I think the improvements at the corner, embracing the 7th street improvements, worth in October, 1854, not more than three thousand dollars. I could not tell the value of the other houses without examining them.

WM. DOUGLAS.

Sept. 25th, 1857.—James Adams, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories, deposeth and saith:

1st interrogatory. State what you know in reference to a note of Nicholas Callan and Samuel A. Peugh, discounted at the Bank of Washington the 13th of December, 1855, for five thousand dol-

lars, for whose use it was discounted, and to what the proceeds were applied.

Answer. The note was discounted on the application of Nicholas Callan, through John F. Callan. The object in raising the money, as I understood it, was to pay the purchase-money for a house to be purchased from Mrs. Nalley by Nicholas Callan, and deeded to him. Mr. Nicholas Callan gave a pledge to the bank that the house should be sold for the purpose of paying off the debt within thirty days. (A paper handed to the witness.) This is a copy of a memorandum furnished by Mr. Nicholas Callan to the bank, stating the nature and terms of his transaction and his obligation. The paper is marked Df'ts A.

JAS. ADAMS.

Exhibit marked "Df'ts A," referred to in the foregoing Examination of James Adams.

(Copy.)

WASHINGTON, 13*th Dec.*, 1855.

The deed of part of lots 16 and 17 in square 454, lot 22 in 687, and a half of lot in square 456, is made direct to me by Mrs. M. A. Nalley, and the property is to be by me retained, sold, or otherwise disposed of, to pay $5,000 advanced to-day by the Bank of Washington.

(Signed) N. CALLAN.

I hereby certify that the above is a true copy of the original in my possession.

JAS. ADAMS,
B'k of Washington.

Washington, July 20, 1857.

Oct. 23d, 1857.—James Adams recalled:

2d interrogatory. State to whom, when, and under what circumstances were paid the proceeds of the note of Nicholas Callan and Samuel A. Peugh, discounted at the Bank of Washington, referred to in your former testimony.

Answer. I think the money was paid to John F. Callan about the time of the date of the note, the note being endorsed under Peugh by John F. Callan, and went to his credit on the books as being the last endorsee. Mr. J. F. Callan stated that it was very desirable to get the money that day, and it was inconvenient to get the check of Mr. Peugh on which to draw the money. This was a note of Nicholas Callan to the order of J. F. Callan, endorsed by J. F. Callan, and then endorsed by Peugh. Under these circumstances, the rule would require the proceeds to go to the credit of the last endorser, Peugh; but in a case which we consider all right the first endorser is allowed to endorse again under the last endorsee, and thus draw the money. Such was this case. This case was ratified

afterwards by Peugh by his making a waiver of protest. I understood that the money was for the purchase of that house by the drawer.

JAS. ADAMS.

Sept. 23d, 1857.—Henry M. Morfit, a witness of lawful age, produced on behalf of the defendants, having been duly sworn, in answer to the subjoined interrogatories, deposeth and saith:

1st interrogatory. State whether John F. Callan applied to you to procure for him a deed from Mrs. Jennings's heirs or trustee for lot 8, in square 456, and what took place in relation thereto.

Answer. In about 1851, after the death of Mrs. A. C. Jennings, Mr. John F. Callan applied to me to draw up a deed from the heirs of Wm. Robinson, her trustee, conveying the property, lot 8, sq. 456, said Callan, upon the payment of the consideration-money mentioned in the lease and contract of sale. There seemed to be some controversy among the heirs of Mrs. A. C. Jennings in regard to her estate generally; and this, with a doubt expressed by one of their counsel as to whether the heirs of Robinson should convey the property as required, prevented the closing of this affair. Several months after, this deed was prepared by me to convey this property to John F. Callan by the heirs of the trustee, and authorizing, as I think, N. R. Jennings, who was an executor of an executor, or an executor, under the will of Mrs. A. C. Jennings, to receive the consideration-money. This deed was not executed, and the title has remained suspended as between the heirs of the trustee and John F. Callan, until the institution of this cause. I think I mentioned to the executor, who as to himself was willing that the deed should be executed, that I had no doubt that Mr. J. F. Callan would, under the circumstances, be glad to get back the money he had paid for the improvements, and surrender the property; and in conversation with Mr. Callan afterwards, I alluded to this observation, and he seemed to acquiesce in the expression I had made.

2d interrogatory. Was there any tender by John F. Callan to the trustee or heirs?

Answer. I know of none actually.

HENRY M. MORFIT.

October 20th, 1857.—Henry M. Morfit X-examined by plaintiffs:

1st X interrogatory. You state in answer to the second interrogatory that you know of no actual tender by John F. Callan to the trustee, Robinson, or his heirs. State if any and what arrangement was entered into in relation to the payment of the three thousand dollars, between John F. Callan and Needler R. Jennings, the executor of Alice C. Jennings.

Answer. I know of no arrangement made between those parties as to the payment of the three thousand dollars. I understood

that as Mr. Callan could not then receive the deed that he required, he would pay the interest on the three thousand dollars until he should get the deed. I only state this from understanding. I think I got this from Mr. John F. Callan or Mr. Needler R. Jennings—this agreement—some months after the difficulty about getting the deed.

2d X interrogatory. Did you or did you not advise John F. Callan, that having demanded a deed for the property, and been unable to obtain it, it was unnecessary to make an actual tender?

Answer. No, I did not; and moreover I should never have given him any advice to operate against the interest of my friends, the Jennings.

3d X interrogatory. When did you draw the deed from the heirs of Wm. Robinson, trustee, conveying lot 8, in square 456, to said John F. Callan?

Answer. I do not recollect the time, but it was soon after the death of Mrs. Alice C. Jennings; it was within a short time of the death of Mrs. Jennings, perhaps within some thirty or forty days after her death.

4th X interrogatory. Did John F. Callan, shortly after you drew this deed of conveyance, state to you that the heirs of Wm. Robinson had refused to execute the same?

Answer. I do not recollect whether such a statement was made by Mr. Callan, in the first instance, but I know there was such a refusal, and I think one of the grounds of the refusal was that one of the counsel doubted whether the trustee had not exceeded his authority in making the lease.

5th X interrogatory. Did John F. Callan ever state to you that he had, within sixty days after the death of Alice C. Jennings, offered to pay her executor said amount of three thousand dollars, provided the heirs of Robinson would execute a deed of conveyance of the property?

Answer. Mr. Callan (John F.) expressed to me his willingness to pay the consideration money when that deed should be returned executed, and I am not certain that I did not send that deed down myself; hence, if that deed, which I believe was sent within the sixty days, had been returned properly executed, Mr. John F. Callan would have paid the consideration money. I do not think that John F. Callan could have told me that he had made an offer directly to the heirs of Mr. Robinson. The respective parties lived at a great distance from each other.

October 22d.—From a letter addressed to me by Mr .James R. Jennings, dated 18 July, 1851, saying that Indiana (his sister) had shown him a deed intended to be forwarded to and signed by Benjamin and Wm. Robinson, I must have sent that report to Miss Indiana Jennings, to be forwarded as stated, some time, and not long, before that date of the 18th July, 1851; my letter-book of that

year is not in my office, or perhaps I could ascertain the precise date.

6th X interrogatory. Did Mr. John F. Callan ever state to you that he had, within sixty days after the death of Mrs. Alice C. Jennings, offered either to the heirs or representatives, or any of them, of Mrs. Alice C. Jennings, to pay the said sum of three thousand dollars on receiving a deed of conveyance of the property?

Answer. I do not think that Mr. Callan ever made such a proposition, for this reason—because it would have been a vain proposition, both at law and in right, as the heirs of Alice C. Jennings were not the parties to make the deed, but the heirs of Wm. Robinson, the trustee, were; there is no doubt, if the heirs of Mrs. A. C. Jennings had procured the execution and transmission of that deed to John F. Callan, with authority to them to receive the consideration money, he would have paid it.

7th X interrogatory. Was the deed drawn and sent to Norfolk by you returned unexecuted; and if so, when?

Answer. I think it never came back to me.

8th X interrogatory. Did Mr. John F. Callan ever state to you that it had been returned unexecuted?

Answer. Mr. Callan told me he had never received that deed executed; indeed, from circumstances, I am certain he never has received that deed unless he has got it within a very few days.

9th X interrogatory. When you drew the deed of conveyance, did Mr. John F. Callan inquire of you to whom and to what place it should be sent for execution?

Answer. I think, upon reflection, the address of that paper was, from my acquaintance with the Jennings, left to my discretion or judgment, and no doubt Mr. Callan thought I would give it the precisely correct direction to answer the purpose, and the fair purposes, for which it was sent. I directed—I believe I did it down at the request of Mr. J. F. Callan—to Miss Indiana Jennings, at Norfolk, to be forwarded to the heirs of William Robinson for execution, one or perhaps both of the heirs of the said William being then, I believe, a resident or residents of King and Queen county, Virginia.

10th interrogatory. Has Mr. John F. Callan, within the last three or four months, offered to pay you the said sum of three thousand dollars due to the estate of said Alice C. Jennings; if so, when was said offer made, and where, and what ensued between you when said offer was made?

Answer. I had received a letter from the counsel of the executor of Alice C. Jennings, enclosing the copy of the decree in the court of Norfolk, requiring Mr. John F. Callan to pay up the consideration money for that purpose. I got Mr. Callan to acknowledge the service of that decree. He acknowledged the service, and I transmitted it back to the counsel. In conversation at that time with Mr. Callan, and, I think, several times before that, he told

me that his brother, Nicholas Callan, was to attend to that. Subsequently to this, Mr. Nicholas Callan told me that was trying to raise the money for the purpose of satisfying that claim; and I think he told me that as soon as the money was made up he would bring it to me, and ask me to send that money down to Norfolk to pay for the property. I told him that he should send, or the money should be sent, payable to the order of Needler R. Jennings, executor of Alice C. Jennings. I do not know whom Mr. Nicholas Callan represented or was acting for in this matter. Some time after Mr. John F. Callan called, with some drafts, to ask if they should be sent in that form to Norfolk, as his brother was arranging that. I suggested—but it was only a suggestion, and not as giving counsel—that the better way would be to have them made payable to Needler R. Jennings, executor of A. C. Jennings. Mr. J. F. Callan took them back to have that endorsement made by one of his brothers; I thought he meant Nicholas.

11th X interrogatory. When did Needler R. Jennings take out letters of administration on the estate of Alice C. Jennings?

Answer. As regards the date of N. R. Jennings's letters testamentary under his mother's will, I find, from a letter to his counsel in Norfolk, dated 28 October, 1854, that it was admitted to probate there on the 27th October, 1854.

12th X interrogatory. Was there any bond given by Mr. John F. Callan to Needler R. Jennings, executor, for said sum of three thousand dollars, with interest? If yea, state your means of knowing, whether you drew said bond, and the date thereof.

Answer. I do not know whether said J. F. Callan ever gave such a bond, and I should think he did not, as the obligation in the original contract of purchase was sufficient for that purpose. I ought perhaps to say, that in conversation with J. F. Callan, I understood that Mr. Michael P. Callan was the purchaser or assignee, or interested in this property. I don't know that I ever spoke to Michael P. Callan on the subject.

MARCH 8th, 1858.

This day having been fixed for closing this commission, and notice thereof having been given to both parties to produce their witnesses on or before said day, if any they should wish to have examined, and there being no other witnesses to be examined, and neither party desiring further time for the production of his evidences, the commissioner closed the said commissions, and herewith returns the same under his hand and seal this 8th day of March, 1858.

RICHARD H. CLARKE, [SEAL.]
Commissioner.

Commissioner's costs (11 days)..... $100 00

Plaintiffs' witnesses: Geo. S. Gideon, 2 days; Wm. A. Bradley, 2 days; Samuel Espey, 1 day; Jacob Bigelow, 1 day; Alfred Chapman, 1 day; Samuel Bacon, 1 day; Aloysius L. Newton, 2 days; Jos. C. Lewis, 1 day.

Defendants' witnesses: Chas. Keenan, 2 days; James Towles, 1 day; Sam'l A. Peugh, 1 day; Geo. H. Plant, 1 day; Wm. Douglas, 1 day; James Adams, 2 days; Henry M. Morfit, 2 days.

RICHARD H. CLARKE,
Com'r.

(The following deeds and documents were admitted in evidence by consent:)

William Robinson and Alice Jennings to John F. Callan.

Liber W. B. Lease and Covenants. Recorded 22d Dec., 1840.

This indenture, made the 2d day of November, in the year eighteen hundred and forty, between William Robinson, of King and Queen county, in the State of Virginia, of the one part, and John F. Callan, of the city of Washington, of the other part, witnesseth: That for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained, and which by and on the part of the said John F. Callan, his executors, administrators, and assigns, are to be paid, done and performed, he, the said William Robinson, as trustee of Mrs. Alice C. Jennings, and by her assent, which is signified by her signing and sealing these presents, hath demised, leased, granted, and to farm let unto the said John F. Callan, his executors, administrators, and assigns, all that lot of ground in Washington city, District of Columbia, which is designated and known upon the plan of said city as lot of ground numbered eight, in square four hundred and fifty-six, with the premises, buildings, and appurtenances now in the tenure of the said Callan, to have and to hold the said lot of ground and premises, with the buildings and appurtenances now in the tenure of the said Callan, his executors, administrators and assigns, from the day of the date hereof for and during the natural life of Mrs. Alice C. Jennings, now of Norfolk, Virginia; yielding and paying therefor yearly and every year during the natural life of the said Mrs. Alice C. Jennings unto the said William Robinson, his executors, administrators and assigns, the annual rent or sum of two hundred dollars, payable by quarterly portions, the first payment of fifty dollars thereof to commence on the third day of February, 1841, which said annual rent shall be clear of all deductions, costs, charges and offsets, and of all taxes, repairs, public dues, assessments or charges of whatsoever kind: provided always and upon condition nevertheless, that if it shall happen that the said yearly rents hereby reserved, or either of them, as payable and to be paid quarterly, or any part of them, shall be in arrear and unpaid by the space of thirty days

next over or after either of the days of payment whenever the same ought to be paid, as aforesaid, being lawfully demanded; or if no sufficient distress can be found on the premises hereby demised, whereof to make the said rent at the time when the same shall be payable, or if the said John F. Callan, his executors or administrators, or any of them, shall assign over or otherwise part with the indenture or the premises hereby leased, or any part thereof, without the consent of the said William Robinson, his heirs or assigns, first had and obtained in writing, under his or their hands and seals, for that purpose; or if the said Callan or executors or administrators shall fail to pay the taxes, public dues, or any other imposition of law on or for the said lot of ground, premises and improvements, or of either of them, then and in either case it shall and may be lawful to and for the said William Robinson, his heirs or assigns, with the premises hereby leased, or any part of them, in the name of the whole, to re-enter and the same to have again, repossess and enjoy, as in his and their first and former estate, anything herein contained to the contrary notwithstanding. And the said John F. Callan doth hereby for himself, his heirs, executors and administrators, covenant and agree to and with the said William Robinson, his heirs, executors and assigns, that he, the said John F. Callan, his heirs and assigns, shall and will well and truly pay or cause to be paid unto the said William Robinson, his heirs or assigns, the said yearly rent of two hundred dollars in quarterly payments; the first payment to commence on the 3d of February, eighteen hundred and forty-one; and shall well and truly pay all municipal and other taxes, charges and public dues, and in default of any such payment of taxes, charges or public dues by said Callan or assigns, that then the amount of such taxes, charges, and public dues shall be and become an additional rent, which the said William Robinson, his heirs and assigns, shall and may distrain for on all property subject to distress on the same premises, in the same way and as effectually as said Robinson and assigns may distrain for the stated rent herein reserved. And the said John F. Callan having contracted for the purchase of the said lot of ground by these presents in fee, after the decease of the said Mrs. Alice C. Jennings, for the sum of three thousand dollars, which sum of three thousand dollars is to paid by him or his heirs or assigns to the said William Robinson, his heirs or assigns, within sixty days from the day of the death of the said Mrs. Alice C. Jennings; and the said William Robinson, with the sanction of the said Alice C. Jennings, which is hereby made known by her being a party to these presents, having agreed to convey all his right, title, and interest in and to said lot of ground and premises to the said John F. Callan, his heirs and assigns, forever, upon the payment of the sum of three thousand dollars within the time specified as aforesaid: therefore, this indenture further witnesseth, that for and in consideration of the premises, the said John F.

Callan, for himself, his heirs, executors and administrators, covenants, promises and agrees to and with the said William Robinson, that within sixty days after the *disease* of the said Mrs. Alice C. Jennings, he, the said John F. Callan, his executors and administrators, shall and will pay to him, the said William Robinson, his heirs, executors and administrators, the said sum of three thousand dollars over and above all rent in arrear, and all taxes and other liabilities of said lot and premises; and that upon the non-payment thereof within that time, to wit, within sixty days from the death of Mrs. Alice C. Jennings, of which death and time of death the said Callan and his heirs and assigns are and shall be bound to take notice, without proof thereof by said Robinson or assigns, he, the said William Robinson, his heirs and assigns, into the premises hereby contracted for, or any part thereof, in the name of the whole, may re-enter, and the same shall have again, repossess and enjoy, as in his and their first and former estate, anything herein contained to the contrary notwithstanding, and may distrain for all rent in arrear at the rate aforesaid, for the time of holding over by the said Callan or assigns, after the decease of said Alice C. Jennings, and which holding over and distress shall not be construed as an extension of said lease on said premises, but as a tortious holding by said Callan or assigns against the interest of the parties hereto and of this instrument, and the distress as a remedy reserved after the death of said Alice C. Jennings. And the said John F. Callan covenants in like manner for himself, his executors and administrators, to and with the said William Robinson, his heirs, executors and assigns, that besides the remedy and right of re-entry in and upon said premises, upon non-payment by said Callan or assigns of the three thousand dollars within the time herein stipulated, he, the said William Robinson, his heirs, executors and assigns, shall and may have and maintain an action at law to recover the said sum of three thousand dollars, with legal interest from the time it ought to have been paid, without any impediment by or from the said Callan, his heirs or assigns, whatsoever, it being the intent of the parties hereto, that the remedy for the recovery by said Robinson and assigns shall be as well against the said Callan and assigns as against the said property; and also that it shall be against both, as herein provided for. And the said Alice C. Jennings, for and in consideration of the premises, and also the sum of one dollar current money, in hand paid her by the said John F. Callan, the receipt whereof is hereby acknowledged, covenants for herself, her heirs, executors and assigns, to and with the said Callan, his heirs and assigns, that upon the payment by him or them of the said sum of three thousand dollars to said William Robinson, his heirs or assigns, within the time hereinbefore specified, he, the said Robinson, and his heirs, shall and will stand seized in fee of all her right

and title in and to the lot of ground and premises to the use and for the benefit of said John F. Callan, his heirs and assigns, until conveyance of said lot, as hereinbefore described, shall be made to said Callan, his heirs and assigns; and that after that conveyance, he, the said John F. Callan, his heirs and assigns, shall and may hold the said lot of ground and premises with the appurtenances unto his and their sole use, benefit and behoof, free and clear of her, the said Alice C. Jennings, her heirs and assigns, forever. And the said William Robinson covenants for himself, his heirs and assigns, to and with the said John F. Callan, his heirs and assigns, that upon the payment of all the rents, dues and taxes, as herein reserved, to said William Robinson and assigns, and also the performance of all the covenants by the said Callan and assigns, and also the payment of the three thousand dollars, within the time herein specified, he, the said William Robinson, his heirs and executors, shall and will convey all his right, title, interest, and estate in and to the said lot of ground and premises, as herein described, unto him, the said John F. Callan, his heirs and assigns, forever.

In testimony of all which, the respective parties thereto being William Robinson, of King and Queen county, in the State of Virginia, Alice C. Jennings, of the borough of Norfolk, in the same State, and John F. Callan, of the city of Washington, have hereunto set their several hands and seals the day and year first in this indenture written.

WM. ROBINSON, [SEAL.]
ALICE C. JENNINGS, [SEAL.]
JNO. F. CALLAN. [SEAL.]

Signed, sealed, and delivered in presence of—

COUNTY OF KING AND QUEEN,
State of Virginia, to wit.

We, Peter T. Pollard and Francis Smith, justices of the peace in and for the county of King and Queen aforesaid, in the State of Virginia, do hereby certify that on this day William Robinson, a party to a certain deed bearing date on the 2d day of November, in the year eighteen hundred and forty, and hereto annexed, personally appeared before us, in our county aforesaid, the said William Robinson, being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this the 2d day of November, in the year eighteen hundred and forty.

P. T. POLLARD, *J. P.* [SEAL.]
F. SMITH, *J. P.* [SEAL.]

VIRGINIA,
King and Queen County, to wit.

I, Robert Pollard, jr., clerk of the county court of King and Queen aforesaid, do hereby certify that Peter T. Pollard and Francis Smith, whose names are signed to the within certificate, were at the time of signing the same, and now are justices of the peace for the county aforesaid, duly commissioned and qualified according to law, and to whose official acts as such due faith and credit is and ought to be given. And I further certify that I believe the signatures of the said Peter T. Pollard and Francis Smith to be their signatures.

In testimony whereof I have hereto set my hand, and affixed the seal of my office, this 10th day of December, 1840.

ROBERT POLLARD, JR., [SEAL.]
Clerk.

BOROUGH AND COUNTY OF NORFOLK,
State of Virginia, to wit.

We, Charles H. Shield and William *P.* Cunningham, justices of the peace in and for the said borough in the State of Virginia, do hereby certify that on this day Mrs. Alice C. Jennings, a party to a certain deed bearing date on the 2d day of November, 1840, and hereto annexed, personally appeared before us in borough aforesaid, the said Mrs. Alice C. Jennings being personally well known to us as the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under our hands and seals this 19th day of November, eighteen hundred and forty.

CHAS. H. SHIELD, [SEAL.]
WM. E. CUNNINGHAM. [SEAL.]

STATE OF VIRGINIA,
Norfolk Borough, to wit.

I, John Williams, clerk of the Hustings court, of the borough of Norfolk aforesaid, do hereby certify that Charles H. Shield and William E. Cunningham, esquires, who have given the above certificate, are justices of the peace in and for the said borough, duly elected and qualified; that full faith and credit is due to their official acts as such, and that the signatures "Chas. H. Shield" and "Wm. E. Cunningham," above, are in their respective handwriting, as I do believe.

In testimony whereof I hereto set my hand, and affix the seal of said court, this nineteenth day of November, in the year one thousand eight hundred and forty, and of the Commonwealth the sixty-fifth.

JNO. WILLIAMS, [L. S.]
Cl'k.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On the twenty-second day of December, in the year eighteen hundred and forty, personally appear before the subscribers, two justices of the peace in and for the county aforesaid, in the District of Columbia, John F. Callan, a party to a certain deed bearing date the second day of November, 1840, and hereunto annexed, the said John F. Callan being personally well known to us as the person who executed the said deed, and this day, in our county aforesaid, acknowledged the same before us to be his act and deed; all of which we, W. Thompson and Henry Naylor, justices of the peace in and for the county aforesaid, do hereby certify.

Given under our hands and seals the day and year first above written.

W. THOMPSON, [SEAL.]
HY. NAYLOR. [SEAL.]

John F. Callan and wife to Mary Ann Nalley. Deed. Recorded 11th Nov'r, 1852.

This indenture, made this fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, between John F. Callan, of the city of Washington, D. C., of the one part, and Mary Ann Nalley, of the same, of the other part, witnesseth: That the said John F. Callan, for and in consideration of the sum of five thousand dollars current money of the United States to him in hand paid, at or before the sealing and delivery of these presents by the said Mary Ann Nalley, the receipt of which is hereby acknowledged, hath given, granted, bargained and sold, enfeoffed, conveyed, released and confirmed, and by these presents doth give, grant, bargain and sell, enfeoff, convey, release, and confirm unto the said Mary Ann Nalley, *his* heirs and assigns forever, all those pieces or parcels of ground in the said city of Washington, known as the west half of lot numbered seven (7), in square numbered four hundred and fifty-six (456); lot numbered twenty-two (22), in square numbered six hundred and eighty-seven (687); also an area of ground, one hundred feet by seventeen feet, in square four hundred and fifty-four (454), beginning for the same at a point on the south line of lot 17 in said square 454, where it borders on the alley, thirty-seven feet from the southeast corner of said lot 17, and running west on the north line of the alley seventeen feet; then, with that width, north one hundred feet, parallel to the fifteen-foot alley in said square, being parts of lots 16 and 17 in said square 454, together with the buildings, improvements, rights, privileges, appurtenances and other hereditaments to the same belonging or in any manner appertaining; and the remainders, reversions, rents, issues and profits thereof, and all the right, title, interest and estate of him, the said John F. Callan, in and to the same: to

have and to hold the said lots and parts of lots aforesaid and premises with the appurtenances, unto her, the said Mary Ann Nalley, her heirs and assigns forever, to her and their sole use, benefit and behoof forever. And the said John F. Callan for himself, his heirs, executors and administrators, by these presents covenants, promises, and agrees to and with the said Mary Ann Nalley, her heirs and assigns, in manner following, to wit: That he, the said John F. Callan and his heirs, shall and will warrant and forever defend the said lots and parts of lots as above described, and premises, with the appurtenances, hereby bargained and sold, unto her, the said Mary Ann Nalley, her heirs and assigns, from and against him, the said John F. Callan, his heirs and assigns, and all persons claiming, or who may claim, by, under or through him, them, or any of them.

In testimony whereof the said John F. Callan and Sarah A. Callan, his wife, have hereunto set their hands and affixed their seals, the day and year first hereinbefore written.

JOHN F. CALLAN, [SEAL.]
SARAH A. CALLAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOSHUA PEIRCE,
N. CALLAN.

DISTRICT OF COLUMBIA,
Washington County, to wit.

We, Joshua Peirce and N. Callan, justices of the peace in and for the county aforesaid, do hereby certify, that John F. Callan, a party to a certain deed to Mary Ann Nalley, bearing date on the fifteenth day of October, one thousand eight hundred and fifty-two, and hereunto annexed, personally appeared before us, in our district and county aforesaid, the said John F. Callan being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed; and we, justices of the peace as aforesaid, do further certify, that Sarah A. Callan, the wife of the said John F. Callan, party to the said deed aforesaid and hereunto annexed, personally appeared before us, in our district and county aforesaid, the said Sarah A. Callan being well known to us as the person who executed the said deed, and being by us examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah Ann Callan, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Taken before and certified by—

JOSHUA PEIRCE, *J. P.* [SEAL.]
N. CALLAN, *J. P.* [SEAL.]

John F. Callan and wife to Michael P. Callan. Conveyance. Recorded 14th April, 1855.

This indenture, made the sixteenth day of October, in the year one thousand eight hundred and fifty-four, between John F. Callan and Sarah A. his wife, of the first part, and Michael P. Callan of the second part, all of the city of Washington, in the District of Columbia. Whereas, by deed dated the second day of November, in the year eighteen hundred and forty, William Robinson and Alice C. Jennings, therein named, granted a lease to the said John F. Callan, of lot number eight, in square number four hundred and fifty-six, in the said city of Washington, during the life of the said Alice C. Jennings, with the right of purchasing the fee of and in said lot, at the price therein mentioned; and whereas the said John F. Callan hath improved the said lot, and the said Alice C. Jennings hath departed this life, but no conveyance of the fee hath yet been executed to him; and whereas the said John F. Callan hath contracted with the said party hereto of the second part for the sale of his interest in and to the said premises, and also in and to any other lots and premises owned by him in the said city of Washington, at the price or sum of four thousand and nine hundred dollars: This indenture therefore witnesseth, that in consideration of the said sum of four thousand and nine hundred dollars current money of the United States, to the said parties hereto of the first part in hand paid by the said *parties hereto of the first part in hand paid by the said* party hereto of the second part, at or before the execution of these presents (the receipt whereof is hereby acknowledged,) they, the said parties hereto of the first part, have granted, bargained, sold, aliened, released and assigned, and by these presents do grant, bargain, sell, alien, release and assign unto the said party hereto of the second part, his heirs and assigns, all the estate, right, title and interest whatsoever, legal and equitable, of the said parties hereto of the first part, and of each of them, of and in all that the said lot or piece or parcel of ground, being lot number eight, in square number four hundred and fifty-six, in the said city of Washington, purchased as aforesaid, and also of and in all other lots, pieces or parcels of ground of the said John F. Callan, or in and to which he has any right or interest in the said city of Washington, together with all and every the improvements, buildings, rights, ways and appurtenances whatsoever belonging to the same; to have and to hold the said pieces or parcels of ground and hereditaments, and every of them, and every part thereof, with the appurtenances, unto and to the use to the said party hereto of the second part, his heirs and assigns forever, with the privilege and right of purchase above mentioned, and all other rights and covenants appertaining to the same, and to which the said John F. Callan is entitled. And the said John F. Callan doth hereby for himself, his heirs, executors and administrators, covenant to and with the said party hereto of the second part, his heirs and

assigns, to warrant and defend the said premises, and every o them, unto him and them, against all persons whomsoever, and that he and they, and all such persons, shall and will at all times hereafter, at the request and cost of the said party hereto of the second part, his heirs and assigns, do any further act or deed the better to convey and assign the said premises and his interest therein.

In witness whereof, the said parties hereto of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. CALLAN, [SEAL.]
SARAH A. CALLAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. CALLAN,
JAMES LAWRENSON.

DISTRICT OF COLUMBIA,
Washington County, to wit.

We, N. Callan and Jas. Lawrenson, two justices of the peace in and for the county above named, do hereby certify that John F. Callan and Sarah A., his wife, parties to the aforegoing deed of indenture, bearing date the sixteenth day of October, 1854, and hereunto annexed, personally appeared before us, in our said county, on the day of the date hereof, (they being personally well known to us as the persons who executed the said deed,) and the said John F. Callan did then and there, in our presence, execute and acknowledge the same as and for his act and deed; and the said Sarah A., the wife of the said John F. Callan, being by us previously examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Sarah A. Callan, did then and there, out of the presence and hearing of the said John F., her husband, but in our presence, execute and acknowledge the same as and for her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals the sixth day of December, in the year one thousand eight hundred and fifty-four.

N. CALLAN, *J. P.*, [SEAL.]
JAMES LAWRENSON, *J. P.* [SEAL.]

Record of Proceedings in Chancery, had in the Circuit Court of the city of Norfolk, between Amanda C. Jennings, Plaintiff, and Needler R. Jennings and others, Defendants.

VIRGINIA.

Pleas at the court-house of the city of Norfolk, before the circuit court of the said city, on Wednesday, the sixth day of June, eighteen hundred and fifty-five.

Be it remembered, that heretofore, to wit, at rules held in the

clerk's office of the said circuit court on the fourth day of April, eighteen hundred and fifty-five, came Amanda C. Jennings, by Tazewell Taylor, her counsel, and filed her bill of complaint against Needler R. Jennings, in his own right, and as executor of Alice C. Jennings, deceased, and as trustee in the deed of marriage settlement between John Brooks and his wife, Indiana H., now deceased, Robinsonora Clarke, James R. Jennings, William Robinson and Alice Octavia, his wife, Benjamin N. Robinson, John Brooks, and James Jennings Brooks, the said last named being an infant, under the age of twenty-one years, and John F. Callan; which bill, with the exhibits therewith filed, is in the following words and figures, to wit:

To the Honorable Richard H. Baker, Judge of the Circuit Court of Norfolk city:

The bill of your oratrix, Amanda C. Jennings, respectfully represents: That Needler Robinson, by his last will and testament, and his codicils thereto annexed, admitted to probate in the county court of New Kent county on the 9th day of January, 1823, an office copy of which is herewith filed, and prayed to be taken as a part of this bill, (Exhibit A,) devised to William Robinson, of Berwell, in the county of King and Queen, as trustee for his niece, Alice C. Jennings, then the wife of Robert C. Jennings, certain property mentioned in the will, or so specially designated therein as to be ascertained with certainty, whose profits were to be converted to her sole benefit during her life, and at her death the said estate was to be divided equally among her children by the said Robert C. Jennings, unless by will she directed otherwise towards them, which she had liberty to do by said will. At the time of the execution of said will and codicils, which your oratrix charges were executed a short time before the death of said testator, the said Alice and Robert C. Jennings had six children, viz: Robert C. Robinson, Needler R., Indiana H., James R., and Alice Octavia, to each of whom the said testator devised one-fifteenth part of the residue of his estate, and by said will he appointed the said William Robertson executor of his said last will and testament, who duly qualified as such, and took upon himself the burthen and execution thereof, both as executor and trustee as aforesaid, under said will.

Your oratrix charges, that she also is a child of the said Alice and Robert C. Jennings, born after the death of the said Needler Robinson; that the said William Robinson, as executor, assented to the legacy as aforesaid to himself, as trustee for the said Alice C. Jennings, and in that character received the said estate, and held and managed it for the benefit of the said Alice C. Jennings, according to the terms of the said will; that the said William Robinson, as trustee, invested a part of the money received by him

out of the estate of the said Needler Robinson for the use of the said Alice C. Jennings, under the bequest herein recited in the purchase of certain real estate herein now to be mentioned; which said purchases, your oratrix charges, were made with the consent and approbation of the said Alice R. Jennings, as she is informed and believes.

On the 31st day of March, 1825, he thus purchased, for the sum of nineteen hundred dollars, from Henry M. Morfit, of Washington city, a lot of land in said city of Washington, in the District of Columbia, and numbered (8) eight, in square (456) four hundred and fifty-six, in the plan of said city, which said lot was conveyed by the said Henry M. Morfit to the said William Robinson, as trustee for said Alice C. Jennings, by deed duly recorded, as will more fully appear by the original deed herewith filed as an exhibit, marked B, and prayed to be taken as part of this bill; and on the 31st of August, 1826, he, in like manner, purchased from Philip Barraud, Martha Hall Gell, and John D. McGell, for the sum of three thousand dollars, a house and lot in this city, situated on Duke street, the boundaries of which are particularly set forth in the deed conveying the said lot of land to the said William Robinson, which was duly recorded, and an office copy of which said deed is herewith filed as an exhibit, marked C, and prayed to be taken as part of this bill.

Your oratrix charges, that the said lot, in the city of Norfolk, was purchased as a residence for the use of the said Alice C. Jennings and her family, and that she occupied it as such until her death, which occurred in May, 1851, claiming and holding it as a part of her estate under the will of said Needler Robinson, because purchased out of the funds bequeathed to the said William Robinson, as aforesaid, and her said claim thereto was recognised as valid by the said William Robinson in his lifetime, (whom the said Alice C. Jennings survived several years,) and by his heirs-at-law, as hereinafter mentioned, since his death, altho' the deed conveys the said lot to the said William Robinson in his own right.

Your oratrix would further charge and show unto your honor, that on the 2d day of November, 1840, the said William Robinson, as trustee as aforesaid, and with the assent of the said Alice C. Jennings, demised by deed of that date to John F. Callan, of Washington city, the lot of land herein first mentioned, with its appurtenances, situated in the said city of Washington, for and during the natural life of the said Alice C. Jennings, for the yearly net sum of two hundred dollars, which he paid to the said Alice C. Jennings during her life, and by the same deed the said William Robertson, with like assent, contracted to sell to the said John F. Callan, after the decease of the said Alice C. Jennings, the said lot of land for the sum of $3,000, which sum was to be paid by the

said Callan to the said William Robinson, his heirs or assigns, within sixty days after the death of the said Alice C. Jennings; upon payment of which sum the said William Robinson agreed to convey the said premises (after the death of the said Alice C.) to the said Callan in fee; all which will fully appear by an office copy of the said deed and agreement, which was duly recorded, herewith filed as an exhibit, marked D, and prayed to be taken as part of this bill.

Your oratrix further charges, that the said William Robinson faithfully executed the duties of his said trust, and allowed the said Alice C. Jennings the full enjoyment of the said estate so bequeathed to him for his benefit according to the intent and purposes of the said testator. That besides the real estate above mentioned, forming a part of the trust estate so bequeathed her, as herein expressly charged, the said William Robinson delivered to the said Alice C. Jennings the residue of the estate so bequeathed in trust, consisting of sundry valuable negroes and bank stock, and other personal property, which she held and managed for her own use and benefit, subject to the trusts of the will after the death of her husband, the said Robert C. Jennings, which occurred in a few years after the death of the said Needler Robinson, and that she never married again. That the said William Robinson some years before the said Alice C. Jennings, intestate, leaving as his heirs-at-law his sons, William Robinson and Benjamin N. Robinson. That Robert C. Jennings, one of the sons of the said Alice C. and Robert C. Jennings, hereinbefore mentioned, died before his mother, without children. That Robinsonora, another of said children, married one Thomas Clark, now dead, and survived her said husband and mother; and that Needler R. Jennings, James R. Jennings, and Alice Octavia (who intermarried with William Robinson, herein named, as son and one of the heirs-at-law of William Robinson, trustee and executor as herein aforesaid,) also children as aforesaid of the said Alice C. and Robert C. Jennings, survived their said mother. That Indiana H. Jennings, another of the said children, also survived her said mother, and in October, 1851, intermarried with one John Brooks, by whom she had issue an only child, to wit, a son named James Jennings Brooks, an infant of tender years, and soon afterwards died, her said husband and child surviving her. That a marriage settlement, duly recorded in the corporation court of said city, was executed between the said Indiana H. and John Brooks, and that Needler R. Jennings, the brother of the said Indiana, was made trustee in said deed.

Your oratrix files herewith an office copy of said deed, as an exhibit marked E, that the court may decide upon the effect of the said deed in the rights of the surviving husband and child in the distribution of the property left by the said Alice C. Jennings.

And your oratrix further charges, that the said Alice C. Jennings, by her last will and testament, in writing, and in the due exercise of the power and trust vested in and conferred upon her by the will of the said Needler Robinson, made a disposition of the estate and property which she acquired under the will of said testator; and that the said Alice had and left no other estate or property besides what she thus acquired; and that the said will or paper writing was duly admitted to probat, in the corporation court of the city of Norfolk, on the 27th day of October, 1854; and that Needler R. Jennings, one of the executors therein named, (William Robinson, the other named executor, having died before the said testatrix,) duly qualified as executor. A copy of said will and probat is herewith filed as an exhibit, marked F. Your oratrix charges, that said Needler R. Jennings, by an order of the said corporation court of the city of Norfolk, made on the 1st day of November, 1851, (a copy of which is herewith filed as an exhibit, marked G,) was appointed curator of the estate of the said testatrix, Alice C. Jennings, until her said will was admitted to probat, or until administration of her estate was granted; and that the said Needler R. Jennings, as curator and as executor, has sold all the perishable estate of the said testatrix, and paid her debts and managed the estate disposed of by the said will, and received the income thereof since her death, for the use of the parties interested, and with that consent, and for which he is liable to account. That he has received the rents of the house and lot in Norfolk city, hereinbefore referred to, and has also received from John F. Callan the interest in the sum of $3,000, due under his contract hereinbefore mentioned, for the purchase of the real premises in Washington, accrued since the death of the said Alice C. Jennings, and up to July, 1854, from which last period the said Callan is indebted for interest, and for the principal sum of $3,000.

Your oratrix further charges, that whilst the legal title to the real premises on Duke street, in the city of Norfolk, purchased, as herein stated, by William Robinson, now deceased, is vested in his heirs-at-law hereinbefore named, to wit, William Robinson and Benjamin N. Robinson, yet that the said property is a part of the estate which the said Alice C. Jennings could lawfully dispose of by her will among her children for the reasons herein stated, and she is advised that the court will so regard the same, and require the said William and Benjamin N. Robinson to convey their legal naked title in the said premises, so that the bequests of said will may be satisfied. She charges that the said William and Benjamin N. Robinson admit the said trust, and are willing to comply with any direction the court may think proper to make in the premises.

Your oratrix charges that it will be necessary and expedient for the interest of all concerned to sell the said real premises. She further charges that the amount due from the said John F. Callan

for the purchase of the real premises in Washington city, under the agreement herein mentioned, should be paid by him under the order of this court; that the said fund may be distributed under the will of the said Alice C. Jennings; and that upon the payment thereof a proper conveyance should be executed to the said Callan. She also charges that the said Needler R. Jennings holds as his own the slaves bequeathed to him by the said will of the said Alice C. Jennings, and that he is liable as her executor to account for the same at $2,000, charged to him by the said will as a condition of said bequest.

Your oratrix would further charge, that she received, as a gift from her mother many years ago, a negro girl, named Matty, then a young girl, but now 30 years of age, and the mother of four children, born since said gift. Some of said children having been born since death of said Alice C. Jennings, she submits it to the court to decide whether, in taking her portion of the estate devised to her by the will of said Alice C. Jennings, the said Matty and her children, or any of them, are to be treated as a part of the distributable estate, to be accounted for by your oratrix in part of her bequest under the will, although she claims that she is not so bound. She is advised, and so charges, that in the distribution of the estate so left by the said Alice C. Jennings, she is entitled to receive, by virtue of the provisions of the will of the said Alice C. Jennings, out of the estate a sum of money equal in amount to the estate left to each of her other sisters herein named by their uncle, Needler Robinson, with interest from the death of the said testator, which amount your oratrix believes and charges to be not less than $3,500, (thirty-five hundred dollars;) and that the residue of said estate, after paying the debts of the said Alice C. Jennings and expenses of administration, and the legacy of five hundred dollars to James Roddy Jennings (the legacy to Robert C. Jennings having lapsed by his death before the said testatrix,) is to be divided equally between Robinsonora Clarke, Alice Octavia, the wife of William Robinson, the husband or child of Indiana H. Brooks, deceased, (as the court may decide,) and your oratrix, Amanda C., and she, with the other parties concerned, desires the aid of this court to collect the said estate, convert the real estate into money, and distribute the proceeds among the appointees, under the will of the said Alice C. Jennings.

Your oratrix, therefore, prays that the said Needler R. Jennings, in his own right and as executor of the said Alice C. Jennings, deceased, and as trustee under the deed of marriage settlement between John Brooks and his wife, Indiana H. Brooks, now deceased, Robinsonora Clarke, James R. Jennings, William Robinson, and Alice Octavia, his wife, and the said William Robinson, in his own right, as one of the heirs-at-law of William Robinson, deceased, Benjamin N. Robinson, John Brooks, James Jennings

Brooks, infant child and heir-at-law of Indiana H. Brooks, deceased, and John F. Callan, may be made parties defendants to this bill, and required to answer the allegations hereof as if particularly interrogated thereon, the said infant by a guardian ad litem, to be assigned to defend him in this suit. That the said Needler R. Jennings, executor and as curator of the estate *of the estate* of the said Alice C. Jennings, be required to render an account of his dealings and transactions with said estate, as executor and curator, and individually to account for the rents and other moneys received from the estate left by the said Alice C. Jennings, which are not properly embraced in his account as executor. That your honor would decree a sale of the real premises in the city of Norfolk herein mentioned, and require the defendants, William Robinson and Benjamin N. Robinson, heirs of the said William Robinson, deceased, to unite in any conveyance to the purchaser thereof, and that they may be declared to hold the same as trustees for the beneficiaries under the will of the said Alice C. Jennings, deceased, and that the proceeds of sale thereof may be applied accordingly. That the defendant, John F. Callan, may be decreed to pay, under the decree of this court, the sum of three thousand dollars, with interest from the day of July, 1854, until paid, in fulfilment of his agreement herein mentioned, and upon the payment thereof a proper conveyance to be made him for the real premises in Washington, contracted to be sold to him as herein aforesaid. That the said Needler R. Jennings be required to account for the sum of two thousand dollars, with interest from the day of May, 1851, (the period of the death of the said Alice C. Jennings,) being the sum required of him by the will of the said testatrix, as a condition of the legacy of the slaves bequeathed him by the said will, and that upon the payment thereof his title to the said slaves be confirmed. That all proper accounts and inquiries be directed, and that the bequests and purposes of the will of the said Alice C. Jennings be fully satisfied and decreed by this court, and the said estate so left by her may be distributed under the directions of this court, according to the provisions of the said will, and the rights of all the said parties settled and declared, according to the facts herein stated, and as they may be made to appear, and that full right and justice may be done in the premises. May it please the court to grant a spa.

TAZEWELL TAYLOR, *P. Q.*

Exhibit A, filed with Plaintiffs' Bill.

I, Nedler Robinson, do constitute this my last will and testament, in manner and words following, viz: I constitute my nephew, William Robinson, of Benvell, in the county of King and Queen, my heir, and hereby direct him *him* to dispose of my effects in manner following. Imprimis: I give to him as trus-

tee for the benefit of my niece, Alice C. Jennings, all that property contained in a book entitled a Book of the Estate of Alice C. Jennings, &c., which I have progressively enlarged, and am enlarging, as an estate, whose profits are to be converted to her sole benefit during her life, and at her death the said estate to be divided equally among her children of her present marriage, unless she by will directs otherwise towards them, which she has liberty to do; which said estate, as said book will show, consists of sundry negroes, by name Clary, and her children, Milly, Henry, Richard, and an infant, Alice and her two children, Peggy and Jenny, Thomas Coy, Martin, Lewis, Daniel, Washington, and Skelton, together with the increase of the above families; sundry household furniture in her use at Norfolk, a part of what I have at Dale, in Chesterfield, and a part of that at Marshfield, in New Kent, agreeable to lists to be found in said book or in the said house; two hundred and fifteen dollars 41 cents of the United States six per cent. stock standing in my name, nineteen shares of Virginia Bank stock, three shares of Farmers' Bank stock of Virginia, eight hundred dollars of the stock standing in my name on the books of the loan of the James River Company, and whatever additional items of stock shall be hereafter found entered in the aforesaid Book of the Estate, &c., or items of any other species of property, together with whatever balance of money found therein, and whatever hire of the above negroes shall be found due; all which I desire may be vested as soon as possible in any of the said stocks, or other capital most agreeable to my said niece, and the profits given to her during her life, and afterwards divided among her children as before directed.

Item. I direct and request my said heir, William Robinson, to divide among my nephews and nieces hereafter named all the residue of my estate in manner following, namely: after dividing the said residue into fifteen parts, to give to his five children, viz: Ann, Gabriel, Martha, Benjamin, and William, each one fifteenth; to the six children of my niece, Alice C. Jennings, viz: Robert C., Robinsonera, Needler R., Indianna, James Rodely, Alice Octavia, each one fifteenth; which I direct and request him to hold accountable for the profits in trust for their benefit, till each one of them marry or become of age; and in case of the death of any of the above before they marry or come of age, that their respective portions shall be divided equally among their surviving brothers and sisters. One fifteenth I direct and request *my* be given to my niece, Hanner Tomkins, as soon as possible; lastly, to accept for yourself, as a remembrance of me, my gold watch, chain, and seal, and all my plate, consisting of salvers, cans, a ladle, table, tea and salt spoons, also two pair of silver buckles; and he shall divide what I have denominated the residue of my estate by valuation, or in proceeds

of a sale of the whole of it, as will be found most equitable and agreeable.

In witness of this being my act and deed I do hereunto affix my hand and seal this fifth day of July, eighteen hundred and twenty-one.

NEEDLER ROBINSON. [SEAL.]

CHESTERFIELD, *December the* 19*th*, 1822.

After cancelling four *heirs* and a half in my irrevocable will of the fifth day of July, eighteen hundred and twenty-one, I substitute the following as a codicil:

That after my funeral is made, and the expenses are provided and paid for, my servants and nephew may be despatched down the country with their clothes and my clothes, together with all the other portable appendages.

Item. It is my will and request that no record may be made of this my will and codicil but in the county of New Kent, and that my papers may be all transferred down there.

In witness whereunto I hereunto affix my hand and seal this nineteenth day of December, eighteen hundred and twenty-two.

NEEDLER ROBINSON. [SEAL.]

Teste: PATRICK GARRISON,
JESSE COGBILL.

The nineteen shares of Virginia Bank stock, and the three shares of Farmers' Bank stock of Virginia, in the devise to my niece, Alice C. Jennings, is to be taken out the stock standing in my name on the books of those respective companies. The portions of the residue of my estate which are directed to be given to my grand-nephews and nieces are to be paid to them as they marry or come of age.

NEEDLER ROBINSON.

Teste: PATRICK GARRISON, and
JESSE COGBILL.

At a court held for New Kent county, at the court-house, on Thursday, the 9th day of January, 1823, the aforewritten last will and testament of Needler Robinson, and two codicils accompanying the same, was produced in court, proved by the oaths of the witnesses thereto, and ordered to be recorded. And at a court held the 13th day of February, 1823, on the motion of William Robinson, who made oath as the law directs, and together with Wm. Boyd, Ric'd Taliaferrow, Andrew L. Moore, and Thos. Moore, his securities, entered into and acknowledged a bond in the penalty of one hundred thousand dollars conditioned according to law. Certificate is granted him for obtaining letters of admin-

istration of the estate of Needler Robinson, dec'd, with his will annexed in due form.

Teste: B. DANDRIDGE, *C. Cur.*

A copy. Teste: JNO. D. CHRISTIAN, *Cl. Cur.*

Exhibit B, filed with the foregoing Bill of the Plaintiff.

This indenture, made this the thirty-first day of March, in the year of our Lord one thousand eight hundred and twenty-five, between Henry M. Morfit, of Washington city, District of Col'a, of the one part, and William Robinson, (as trustee for Alice C. Jennings,) of King and Queen county, Virginia, of the other part, witnesseth: That the said Henry M. Morfit, for and in consideration of the sum of nineteen hundred dollars, current money of the United States, to him in hand paid at or before the sealing and delivery of these presents by the said William Robinson, out of the trust fund left by Needler Robinson, deceased, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents doth give, grant, bargain, and sell, enfeoff*ed*, convey, release, and confirm unto the said William Robinson, as trustee for Alice C. Jennings, and to her and her heirs and assigns forever, the following lot lying in the city of Washington, District of Columbia, and numbered eight in a square four hundred and fifty-six in the plan of said city, being the same which was conveyed by John Oakley by decree of the court of chancery, as guardian to Marcia Burns, daughter of the original proprietor of that part of the city, to Wm. H. Dorsey, by deed of fourth of April, eighteen hundred and two, and by said Dorsey and wife to Lewis H. Edwards, by deed of third of October, eighteen hundred and twelve, and by said Edwards and wife conveyed to Lewis H. Mackin by deed of tenth of November, eighteen hundred and eighteen, and by said Mackin and wife conveyed under deed of the ninth of April, eighteen hundred and nineteen, to David Bates, and conveyed by the executors of David Bates and his wife to this grantor by deed of twenty-second of June, eighteen hundred and twenty-two; all of which deeds are duly acknowledged and recorded in the land records for Washington county, the said lot being opposite the General Post Office, fronting fifty-nine feet eleven inches on E street, and seventy-five feet on Seventh street, and containing four thousand four hundred and ninety-three and three-fourths square feet, being the same which is now occupied by Charles Timons, and upon which is erected a frame building used by the said Timons as an apothecary's shop, together with the buildings, improvements, rights, privileges, and appurtenances, and other hereditaments to the same belonging or in any manner appertaining; and the remainders, reversions, rents, issues, and profits thereof, and

all the right, title, interest, and estate of him, the said Henry M. Morfit, in and to the same: to have and to hold the said lot No. eight, in square four hundred and fifty-six, and premises, with the appurtenances, unto him, the said William Robinson, in trust and for the use of Alice C. Jennings, her heirs and assigns forever, to her and their sole use, benefit, and behoof forever. And the said Henry M. Morfit for himself, his heirs, executors, and administrators, by these presents covenants, promises, and agrees to and with the said William Robinson, as trustee aforesaid for A. C. Jennings, her heirs and assigns, in manner following, to wit: That he, the said Henry M. Morfit, and his heirs, shall and will warrant and forever defend the said lot number eight, in square four hundred and fifty-six, and premises, with the appurtenances, hereby bargained and sold unto him, the said Wm. Robinson, as trustee for Alice C. Jennings, his and her heirs and assigns, from and against him, the said Henry M. Morfit, his heirs and assigns, and all persons claiming or who may claim by, under, or through him, them, or any of them, and from and against all manner of persons and claims whatsoever. And further, that he, the said Henry M. Morfit, and his heirs, shall and will at any and all times hereafter, at the request and costs of the said Wm. Robinson, as trustee of Alice C. Jennings, his and her heirs and assigns, make and execute any and every other deed of assurance in the law for the more sure and effectual conveyance of the said *land* number eight, in square four hundred and fifty-six, in Wash'n, and premises, with the appurtenances, to the said William Robinson, acting as trustee aforesaid, his heirs and assigns, for the use of the said Alice, that the said Wm. Robinson holding as the trustee for A. C. Jennings, her heirs or assigns, or her, his or their counsel learned in the law, shall or may devise, advise, or require, or which may be required by any future trustee appointed by a court of chancery to carry this trust into further execution, and to continue the same for the use and benefit of Alice C. Jennings, her heirs and assigns forever.

In testimony whereof, the said Henry M. Morfit hath hereunto set his hand and affixed his seal the day and year first hereinbefore written. HENRY M. MORFIT. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES ORD,
C. H. W. WHARTON.

DISTRICT OF COLUMBIA,
Washington County, to wit.

Be it remembered that on this 31st day of March, one thousand eight hundred and twenty-five, before the undersigned, James Ord and , justices of the peace, personally

appears Henry M. Morfit, party grantor within named, who acknowledges the within and foregoing instrument of writing to be his act and deed, and the lot No. 8, in square 456, and premises, with the appurtenances therein mentioned, to be the right and estate of the therein named grantee, William Robinson, trustee for A. C. Jennings, for her heirs and assigns forever. And now at the same time personally appears Catharine C. Morfit, wife of the said Henry M. Morfit, who also makes her acknowledgment of the same; and she being by us privately examined apart from and out of the presence and hearing of her husband, "whether she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of or ill usage by her husband, or fear of his displeasure," she acknowledges and declares that she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of or ill usage by her husband, or fear of his displeasure.

Taken before and certified by—

JAMES ORD, *J. Peace.*
C. H. W. WHARTON, *J. Peace.*

Received 7th September, 1825, to be recorded, and the same day was recorded in Liber W. B. No. 15, folios 28, 29 and 30, one of the land records for Washington county, in the District of Columbia, and examined by—

WM. BRENT, *Cl'k.*

Exhibit C, filed with Plaintiffs' Bill.

Whereas by a certain indenture, bearing date the second day of June, 1807, duly recorded in the court of Norfolk borough, and executed between Nathaniel McGill and Martha Heath, his wife, of the one part, and Philip Barraud and James Tayler, of the other part, the lot of land hereinafter described was conveyed unto the said Philip Barraud and James Tayler as trustees for the following purposes, to wit, in trust that the said land, and the tenements and appurtenances thereto belonging, should be held for the use and enjoyment of the said Martha Heath McGill during her natural life, remainder for the use and enjoyment of Catharine Barraud and John Douglass, children of the said Nathaniel and Martha Heath, to them the said Catharine Barraud McGill, and John Douglass McGill, and their heirs forever, and to and for no other use, intent and purpose whatever; and whereas the said Catharine Barraud McGill hath since departed this life, under the age of twenty-one years and without issue, whereby all her right, title and interest in and to the said land, tenements and appurtenances have descended either to the said Martha H. and John D. McGill, jointly, as her joint heirs-at-law, or to the said John D. McGill, as her sole heir-at-law; and whereas James Tayler, one of the trustees aforesaid, hath also departed this life, whereby the said

trust estate remains and continues in Philip Barraud, as the surviving trustee; and whereas the said Martha H. and John D. McGill have consented and agreed to sell and dispose of all the right, title, interest and estate, which they have, hold or enjoy, either jointly or severally, in and to the said land, tenements and appurtenances, and to that end have requested the said Philip Barraud to become a party to these presents: Now this indenture, made this 31 day of August, in the year of our Lord eighteen hundred and twenty-six, between the said Philip Barraud, Martha H. McGell and John D. McGell, of the one part, and William Robinson, of the county of King and Queen, and State of Virginia, of the other part, witnesseth, that the said Philip Barraud, at the instance and request of the said Martha H. McGell and John D. McGell, and for and in consideration of the sum of ten dollars to him in hand paid by the said William Robinson, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed and confirmed, and doth by these presents grant, bargain, sell, alien, enfeoff and confirm all that lot or parcel of land in the borough of Norfolk, beginning on Duke street at the south corner of Dorsey's line, and running thence south 23° 10′ west, forty-eight feet; thence north 68° west to Canal street, corresponding with the corner of John Caingan's lot to Alexander Wilson; thence along Canal street until it intersects with Alexander Wilson's line; to have and to hold the said lot, with all waterways, profits, tenements and appurtenances of every description to the same in any wise belonging, to the said William Robinson, his heirs and assigns forever. And this indenture further witnesseth, that the said Martha H. McGell and John D. McGell, for and in consideration of the sum of three thousand dollars, which they hereby acknowledge to have received from the said William Robinson, have bargained, sold, released, relinquished and conveyed, and do by these presents bargain, sell, release, relinquish, and convey to the said William Robinson, his heirs and assigns forever, all the right, title, interest, and estate, legal or equitable, for life, or in remainder or by inheritance or otherwise, which they, the said Martha H. McGell and John D. McGell, jointly and severally, for themselves and their respective heirs, executors and administrators, do hereby covenant and agree with the said William Robinson, his heirs and assigns, to warrant and defend to him and them the full, free, absolute and unqualified right, title, interest and possession, legal as well as equitable, in and of the aforesaid lot of land and appurtenances as hereinbefore conveyed, against the claim or claims of all and every person or persons whomsoever.

In testimony whereof the said Philip Barraud, Martha H. McGell, and John D. McGill, have hereunto set their hands and seals

the 31st day of August, in the year of our Lord eighteen hundred and twenty-six.

P. BARRAUD, [SEAL.]
MARTHA H. McGILL, [SEAL.]
JOHN D. McGILL. [SEAL.]

Signed, sealed, and delivered in the presence of—
D. C. BARRAUD, as to P. B.
JOHN D. McGILL, as to P. B. and M. McGill.
ROBERT C. JENNINGS, as to M. H. McGill and Jno. D. McGill.
C. D. TOMPKINS, as to Mr. and Mrs. McGill.

NORFOLK BOROUGH,
In the Clerk's Office, the 25th day of July, 1828.

This indenture was proved as to Martha H. McGill and John D. McGill, parties thereto, by the oath of Robert C. Jennings, a witness thereto; and in the clerk's office the 10th day of September, 1828, this indenture was acknowledged by Philip Barraud, a party thereto; and in the clerk's office the 23d day of March, 1830, on the motion of William Robinson, and it appearing that this indenture was duly acknowledged by Philip Barraud, a party thereto, in the office, on the 10th day of September, 1828, the same is admitted to record.

Teste: SWEPSON WHITEHEAD, *Cl. Cur.*
A copy. Teste: JOHN WILLIAMS.

Exhibit D, filed with the Plaintiffs' Bill.

(Copy lease from William Robinson and Alice C. Jennings to John F. Callan, dated 2d November, 1840. Copied ante, pages 84 et seq.)

Exhibit E, with the Plaintiffs' Bill.

This indenture, made and entered into this 14th day of October, in the year 1851, between John Brooks, of the first part, Indiana H. Jennings, of the second part, and Needler R. Jennings, of the third part. Whereas a marriage is agreed upon and intended to be solemnized by and between the said John Brooks and Indiana H. Jennings; and whereas it has been agreed upon by and between the said John Brooks and Indiana H. Jennings, that the said Indiana H. Jennings should, notwithstanding her intended marriage, have, hold, enjoy and possess all the property of which she is now possessed or entitled, or may hereafter become possessed of or entitled to, with all and every the rights to and profits of, in, to, or out of the same, free and separate from all the claims or demands of said John Brooks arising from the consummation of the said marriage: Now this indenture witnesseth, that in consideration of the said intended marriage, and in pursuance of the said hereinbefore mentioned agreements, and in consideration of the

sum of five dollars, lawful money of Virgina, to the said Indiana H. Jennings, in hand paid by the said Needler R. Jennings, the receipt whereof is hereby acknowledged, she, the said Indiana H. Jennings, with the consent and approbation of the said John Brooks, testified, by his being a party to and sealing and delivering these presents, hath bargained, sold, assigned, and conveyed, and by these presents doth bargain, sell, assign, and convey unto the said N. R. Jennings, his ex'rs, adm'rs, and assigns, all her interest in and accruing from the estate of Needler Robinson, now in the hands of Richmond Lacy, consisting of certain shares in the stock of the Virginia and Farmers' Bank, money, and of whatever else said interest may consist; also all of her the said Indiana Jennings's interest, now undivided, in and to the estate of her mother, Mrs. Alice C. Jennings, dec'd, of whatever the same may consist, real and personal, and of all other the estate of the said Indiana Jennings of every nature and kind whatsoever, real and personal, in the State of Virginia and elsewhere; to have and to hold the property hereby conveyed, unto the said N. R. Jennings, his ex'ors, adm'ors, and assigns; but, nevertheless, upon the trusts and for the intents and purposes hereinafter expressed; that he, the said N. R. Jennings, shall hold and manage the said property, and all and every part and parcel thereof, to and for the sole and separate use, benefit, and disposal of the said Indiana H. Jennings, her said marriage notwithstanding, and that the same in no manner whatever shall be subject to the direction, control, or disposition of him, the said John Brooks, her intended husband, or be liable for his debts. And upon this further trust, that he, the said N. R. Jennings, his ex'ors, and adm'ors, shall and will pay, transfer, and deliver unto the said Indiana H. Jennings, or unto such person or persons, and such time and times, and in such proportion, manner, and form as she, the said Indiana H. Jennings, may direct by her request or order made in writing, attested by two or more credible witnesses, all the rents, issues, and profits of said property conveyed as aforesaid; and that all the said separate and distinct estate, and the produce and increase thereof, shall be had, held, and enjoyed by such person and persons, and for such use and uses, as the said Indiana H. Jennings shall at any time or times hereafter during her lifetime devise or dispose of by her last will and testament in writing, or by any other writing whatsoever, signed with her hand in the presence of two or more witnesses. And the said John Brooks hereby covenants and agrees that if the intended marriage takes effect he, the said John Brooks, shall and will permit and suffer the said Indiana H. Jennings to give, grant, and dispose of her said separate estate as she shall think fit in her lifetime, and to make such will or other writings as aforesaid, and thereby to give, order, devise, limit, and appoint her said separate estate to any person or persons for any use, intent, or purpose whatsoever; and that he, the said John

Brooks, at all times after the said intended marriage shall take effect, will do all matters and things in his power necessary and proper to the due execution and carrying out of these presents.

As witness the following signatures and seals.

JOHN BROOKS, [SEAL.]
INDIANA H. JENNINGS, [SEAL.]
N. R. JENNINGS. [SEAL.]

Witness: WM. ROBINSON,
R. CARY CLARKE.

This memorandum, made and executed before the above and foregoing deed was signed and acknowledged, and which is to be deemed and taken as a part of the said deed, witnesseth: That the said Indiana H. Jennings, notwithstanding her marriage with the said John Brooks, and notwithstanding in the said deed expressed, shall continue and remain in the undisputed possession of all the property in the said deed mentioned and enumerated as fully as she is now possessed of the same, and shall hold the same as if she were at all times a feme sole, to be entirely free from the debts of the said John Brooks, and to be forever free from the control of the said John Brooks; and this deed or memorandum further witnesseth, that the said Needler R. Jennings's power and control over the property in the said deed mentioned is hereby modified only so far, that the said Indiana H. Jennings retains to herself, notwithstanding the said deed, and notwithstanding her marriage with the said John Brooks, the right to the possession of the said property conveyed in said deed. Witness the following signatures and seals.

October 14, 1851.

JOHN BROOKS, [SEAL.]
INDIANA H. JENNINGS, [SEAL.]
N. R. JENNINGS. [SEAL.]

Witness: WM. ROBINSON,
R. CARY CLARKE.

In the clerk's office of the court of the corporation of the city of Norfolk, on the 15th day of October, 1851, this deed, and the memorandum thereto annexed, was proved as to John Brooks, Indiana H. Jennings, and Needler R. Jennings, the parties thereto, by the oaths of William Robinson and R. Cary Clarke, the witnesses thereto, and admitted to record.

Teste: JNO. WILLIAMS.

Exhibit F, with the Plaintiffs' Bill.

In the name of God, amen. I, Alice Corbin Jennings, being of sound mind and discretion, do make and publish this my last will

and testament, hereby revoking and making void all former wills by me at any time heretofore made.

And first. I direct that my body be decently interred, according to the *rights* and ceremonies of the Episcopal church, and that my funeral be conducted in a manner corresponding with my situation in life, without any ceremony or useless parade. All my worldly possessions I dispose of as follows:

1. After the payment of my just debts and funeral expenses, I desire my executors hereinafter named to pay to my youngest daughter, Amanda Churchill Jennings, a sum of money equal in amount to the estate left each of my other daughters by their uncle, Needler Robinson; and to effectuate this my particular desire, I hereby authorize and empower my said executors to sell and dispose of so much of my estate, real or personal, as may be necessary for that purpose. I desire my said executors to invest the said sum of money immediately for the benefit of my said daughter, and in the manner most conducive to her interest. It is my purpose, by this bequest, to place my said daughter Amanda upon an equal footing with her sisters, who have already been provided for by the will of their uncle, Needler Robinson.

2. I give to my son, Needler R. Jennings, certain negroes, bequeathed to me by the will of my late uncle, Needler Robinson, which negroes I permitted him to take to New Orleans, viz: Peggy and her four children, Elizabeth, Sarah, Robert, and another girl, now an infant, with their increase; Jenny and her four children, Alice, George, Emily, and Mary Frances, with their increase; and negro man Richard. I give these negroes to my said son, upon condition that he pay to my estate the sum of two thousand dollars. My object in making this bequest is that I do not wish these negroes to be separated, and also to acknowledge the receipt of various sums of money paid to me by my said son; and this bequest I regard as a fair equivalent for that and any portion of my estate to which otherwise he might be entitled.

3. I give to my son Robert C. Jennings the sum of five hundred dollars, and the like sum to my son James Roddey Jennings.

4. All the rest and residue of my estate, real and personal, and of every description whatever, I give and devise to my four daughters, Robinsonora Clarke, Indiana H., Alice Octavia, and Amanda C. Jennings, to be equally divided amongst them, share and share alike.

5. In the event of the death of any of my children without issue during my life, it is my will and desire that the portion of such child shall be divided equally amongst my surviving children.

And lastly. I nominate and appoint my brother, Wm. Robinson, and my son, Needler R. Jennings, executors of this my last

will and testament; and in the event of the death of either of them, I will that the survivor shall be sole executor.

In witness whereof, I have hereunto set my hand and seal, at Norfolk, this eighth day of October, 1839.

ALICE C. JENNINGS. [SEAL.]

Signed, sealed, published, and declared as and for the last will and testament of the testatrix, in our presence, who at her request and in her presence have subscribed our names hereto as witnesses—

THOS. G. CLINTON,
F. C. FONTAINE,
HENRY S. ALLMAND.

At a court of the corporation of the city of Norfolk, continued and held on the fist day of November, 1851, the last will and testament of Alice C. Jennings, deceased, bearing date the 8th day of October, 1839, was produced in court by Needler R. Jennings, one of the executors therein named, and F. C. Fontaine and Henry S. Allmand, two of the subscribing witnesses thereto, being dead, John Harrington and John Williams were sworn and severally made oath—the said John Harrington that the signature of F. C. Fontaine thereto subscribed is in the proper handwriting of the said F. C. Fontaine, to the best of his knowledge and belief; and the said John Williams that the signature of Henry S. Allmand thereto subscribed is in the proper handwriting of the said Henry S. Allmand, to the best of his knowledge and belief.

And it being suggested to the court that Thomas G. Clinton, the other subscribing witness to the said will, resides out of this State, namely, in the State of Ohio, it is ordered that the clerk of this court issue a commission to any commissioner appointed by the governor of this State for taking depositions, &c., in the State of Ohio, or to any notary public or justice of the peace for the said State, to take the deposition of the said Thomas G. Clinton as to the execution of the said will.

And at a quarterly term of the court of the corporation of the city of Norfolk, held on the 23d day of October, 1854, it appearing to the court that Thomas G. Clinton, a subscribing witness to the will of Alice C. Jennings, deceased, which was heretofore exhibited in this court for probat, is residing in the District of Columbia, it is ordered that a commission be issued forthwith, to be annexed to the said will or a copy thereof, and to be directed to any commissioner appointed by the governor of the State of Virginia for taking depositions, &c., in the District of Columbia, or to any notary public or justice of the peace of the said District, to take the depositions of the said Thomas G. Clinton as to the execution of the said will.

And at a quarterly term of the court of the corporation of the city of Norfolk, continued and held on the 27th day of October, 1854, the last will and testament of Alice C. Jennings, deceased, with the commission awarded by this court on the 23d instant to take the deposition of Thomas G. Clinton, a subscribing witness thereto, was this day returned into court; which commission, with the certificate and depositions returned therewith, are in the following words and figures, to wit:

To any commissioner appointed by the Governor of the State of Virginia for taking depositions, &c., in the District of Columbia, or to any notary public or justice of the peace for the said District of Columbia, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in examining Thomas G. Clinton, a witness attesting the will of Alice C. Jennings, deceased, hereunto annexed, authorize and require you, that at such certain day and place as you shall appoint, the witness aforesaid before you you call and cause to come and diligently examine on the Holy Evangelists of Almighty God, touching the execution of the said will and his attestation thereto, and his examination into our court of the corporation of the city of Norfolk distinctly and plainly without delay you shall send and certify enclosed, returning also this writ with the said will.

Witness John Williams, clerk of our said court, at the courthouse, this 23d day of October, 1854, in the 79th year of the Commonwealth.

JOHN WILLIAMS.

DISTRICT OF COLUMBIA,
Washington County, ss.

In the matter of the will of Alice C. Jennings, late of Norfolk, in the State of Virginia, I, John F. Callan, a commissioner appointed by the governor of Virginia for taking depositions, &c., in the District of Columbia, do hereby certify, that on this 20th day of October, 1854, at my office at the corner of 7th and E streets, in the city of Washington, D. C., the said time, to wit, between the hours of 10 a. m. and 3 p. m. of said day, and the said place or office having been appointed by me for that purpose, Thomas G. Clinton did appear before me, and I, by virtue of the annexed commission from the court of the corporation of the city of Norfolk, Va., endeavored to examine and interrogate him, the said Clinton, touching the execution of the said will, the same being attached to the said commission, and now marked by me as paper A, but that the said Thomas G. Clinton did positively and absolutely decline and refuse to be sworn or answer any interrogatory or in any way testify before me in that behalf.

And I, the said commissioner, do also certify that I am not authorized or empowered by any law of the said District, as commissioner aforesaid, to enforce the attendance of any witness before me, nor to compel any witness to give his testimony before me. And I do also further certify, that from my own knowledge of the law, and the fact of being myself also a notary public in the county of Washington and the said District, no notary public has any authority by law therein to compel the attendance before him of any witness, or to enforce him to answer any interrogatories, or give evidence before him as such notary. And I also certify, that the laws *enforce* in the said District do not authorize justices of the peace therein to issue compulsory process in civil cases for the attendance of any witness. Wherefore, from the nature of the case, resort was had to the best evidence here that the matter would admit; and Arthur L. McIntire, being called before me, between the hours on the day and at the place aforesaid, was diligently examined on the Holy Evangely of Almighty God, touching the said will, and testified as aforesaid: That he is above the age of twenty-one years, and is draughstman in the U. S. Patent Office, where has been as such for over sixteen years; that he is well acquainted with Thomas G. Clinton, and is familiar with his handwriting, said Clinton having been an assistant examiner of the said Patent Office; that he has frequently seen the said Clinton write, and also sign his name; and that now, upon examining his name as one of the three witnesses to the paper annexed, and marked "A," as the last will of Mrs. Alice C. Jennings, late of Norfolk, Virginia, he testifies that the same is the proper signature of Thomas G. Clinton, and in his handwriting. And I also certify, that on the same day, between the said hours, and at the same place, personally appeared before me, as commissioner as aforesaid, Charles E. Upperman, who being also diligently examined on the Holy Evangelists of Almighty God by me, touching the annexed will of Alice C. Jennings, marked A, did declare and say that he is above the age of twenty-one years; that he is the recording clerk of the U. S. Patent Office, and has been such for about six years; that he is well acquainted with the handwriting and signature of the said Thomas G. Clinton, and has often seen him write; that he now examined the name of said Thomas G. Clinton as one of the three witnesses to the said paper marked A, as the will of Alice C. Jennings, and declares and says, that the said signature of Thomas G. Clinton is his proper signature and in his handwriting; that witness had many opportunities of knowing the handwriting of said Clinton and his signature, as the said Clinton has been for some years, and still is, a patent agent or agent for procuring patents from said U. S. Patent Office, and such applications are recorded by said witness in his official capacity as aforesaid. In testimony of all which doings by me as commisioner

aforesaid, and of the testimony aforesaid, I do hereby certify the same, and return the said commission and the paper marked A, annexed thereto, unto the court of the corporation of the city of Norfolk, Va., hereby further certifying that the testimony aforesaid is taken and certified as is usual in other depositions in such cases.

Witness my hand and seal as commissioner aforesaid, I having no public seal as such, at the city of Washington, D. C., this 26th day of October, 1854.

JOHN F. CALLAN, [SEAL.]
Comm'r for Virginia for the District of Columbia.

And it appearing from the certificate of the commissioner to whom the said commission was directed in the District of Columbia, that the said Thomas G. Clinton, the said witness, appeared before him and refused to testify, touching the execution of the said will; and the said commissioner having further certified that he had no power to issue compulsory process to enforce the attendance of any witnesses in any civil case, and that no notary public or justice of the peace had power to issue such process to enforce the attendance of such witnesses; and the said commissioner having taken and certified in due form the depositions of Arthur L. McIntire and Charles E. Upperman, proving the handwriting and signature of the said Thomas G. Clinton, a subscribing witness to the said will, the said will and the depositions aforesaid are ordered to be recorded. And on the motion of Needler R. Jennings, the executor therein named, who made oath to the said will, and with James R. Jennings, his security, who justified upon oath as to his sufficiency, entered into and acknowledged their bond in the penalty of ten thousand dollars, conditioned according to law. Certificate is granted the said Needler R. Jennings for obtaining a probat of the said will in due form, William Robinson, the other executor therein named, having departed this life.

Teste: JNO. WILLIAMS.

A copy. Teste: JNO. WILLIAMS.

Exhibit G, with the Plaintiffs' Bill.

At a court of the corporation of the city of Norfolk, continued and held on the 1st day of November, 1851, Needler R. Jennings is by the court appointed curator of the estate of Alice C. Jennings, dec'd, until a paper writing purporting to be a writing of the said Alice C. Jennings, dec'd, this day exhibited to the court as her last will, shall be established, or until administration of her estate shall be granted. And thereupon the said Needler R. Jennings made oath according to law, and with S. W. Piement and Robinsonova Clark, his securities, (who have justified as to their sufficiency,) they acting herein by John Williams, their attorney in

fact, entered into and acknowledged a bond in the penalty of four thousand dollars, conditioned according to law.

A copy. Teste: JNO. WILLIAMS.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the city of Norfolk, on the fourth day of April, eighteen hundred and fifty-five, on the motion of the plaintiff, by counsel, John T. Francis is assigned guardian to the infant defendant, James J. Brooks, to defend him in this suit.

Filed among the papers in this cause is an affidavit in these words and figures, viz: Tazewell Tayler maketh oath that John Brooks, a party defendant in a suit in chancery, pending in the circuit court of the city of Norfolk, in which Amanda C. Jennings is plaintiff, and Needler R. Jennings, in his own right and as executor of Alice C. Jennings, dec'd, and others, are defendants, is not a resident of this State, as this affiant has understood and does verily believe.

TAZEWELL TAYLER.

Subscribed and sworn to before me this 4th April, 1855.

JNO. WILLIAMS.

In this suit, (the object of which is to require of the defendant, Needler R. Jennings, to render an account of dealings and transactions with the estate of Alice C. Jennings, dec'd, as executor and curator, and individually, for the rents and other moneys received from the estate left by the said Alice C. Jennings, and for a decree for the sale of the real premises in the city of Norfolk, mentioned in the bill in the said suit, and to require the defendants, William Robinson and Benjamin N. Robinson, dec'd, to unite in a conveyance to the purchaser thereof, and for an application of the proceeds of the sale to the beneficiaries, under the will of Alice C. Jennings, dec'd,) the plaintiff having filed her bill, and affidavit being made that the defendant, John Brooks, is not a resident of this State, it is ordered that the said John Brooks do appear here within one month, after due publication hereof, and do what is necessary to protect his interests, and that a copy of this order be published once a week, four *four* successive weeks, in the Southern Argus, a newspaper published in the city of Norfolk, and posted at the front door of the court-house of this city, on the first day of the next corporation court of the said city.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the city of Norfolk, on the ninth day of May, eighteen hundred and fifty-five, the defendant, N. R. Jennings, appeared and filed his answer in this cause, which said answer in the words and figures following, to wit:

The Answer of N. R. Jennings to a Bill exhibited against him and others in the Circuit Court of Norfolk, by Amanda C. Jennings.

This respondent, for answer, states that the allegations of the bill, so far as he is advised, are substantially true. He acknowledges having received certain moneys belonging to the estate, arising from the sale of perishable property, and also for rent and interest upon an amount due by J. F. Callan, and that therefrom he has paid off certain debts of the estate, as will be seen by reference to an account filed by him as curator in the clerk's office of the court at Norfolk, up to October, 1854.

In like manner he is ready to present his account as executor of the estate, and also to pay the sum of two thousand dollars with interest, as claimed in the bill, after deducting therefrom certain moneys advanced by him to several of the heirs.

N. R. JENNINGS.

CITY OF NEW ORLEANS, *to wit.*

Before me, Daniel J. Ricardo, a commissioner of the State of Virginia, personally appeared N. R. Jennings, whose name is subscribed to the above answer, and made oath that the facts therein stated are true, to the best of his knowledge and belief.

New Orleans, 26th April, A. D. 1855.

D. J. RICARDO,
Commissioner for Virginia.

Commissioner's fee $1, paid to D. J. R.

And on the same day and year last hereinbefore mentioned, to wit, at rules held in the clerk's office of the said circuit court of the city of Norfolk, on the 9th day of May, eighteen hundred and fifty-five, the infant defendant, James Jennings Brooks, by his guardian, this day filed his answer in this cause, to which the plaintiff replied generally; which said answer is in the words and figures following, to wit:

The answer of James Jennings Brooks, an infant under the age of twenty-one years, by John T. Francis, his guardian ad litem, appointed by the court to defend him in this suit, to the bill of Amanda C. Jennings, exhibited against him and others in the circuit court of Norfolk city.

This respondent, answering by his guardian ad litem, says that he is an infant, under the age of twenty-one years, and submits his rights and interests in the premises to the care and protection of this honorable court, and prays that full proof may be required of matters affecting his interests aforesaid.

JNO. T. FRANCIS,
Gdn. ad litem.

And on the same day and year last hereinbefore mentioned, to

wit, at rules held in the clerk's office of the said circuit court of the city of Norfolk, on the 9th day of May, in the year eighteen hundred and fifty-five, on the motion of the plaintiff, by counsel, this cause was set for hearing as to the defendant, N. R. Jennings, on the plaintiffs' bill and the answer of the said defendant.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the city of Norfolk, on the 30th day of May, eighteen hundred and fifty-five, on the motion of the plaintiff, by counsel, this cause was set for hearing as to the infant defendant, James Jennings Brooks, and his answer and the plaintiffs' general replication thereto.

And the defendants, James R. Jennings, Robinsonova Clark, Wm Robinson and wife, and Benjamin N. Robinson, and John F. Callan, appeared, by their counsel, and filed their answers in this cause, which said answers are in the words and figures following, to wit:

The Answer of James R. Jennings to a Bill exhibited against him and others in the Circuit Court of Norfolk city, by Amanda C. Jennings.

This respondent, for answer unto so much of the said bill as he is advised it is material for him to answer unto, says that he believes the facts stated in the bill to be true, but that he has no interest in the suit beyond the amount of the legacy of five hundred dollars bequeathed to him by the will of his mother, and prays that the court will decree it to him in this suit.

JAMES R. JENNINGS.

STATE OF NEW YORK,
City *County, to wit.*

Before me, John B. Breckenridge, a commissioner for the State of Virginia in and for the State of New York, personally appeared, at the city of New York, James R. Jennings, whose name is subscribed to the above answer, and made oath that the facts therein stated are true, to the best of knowledge and belief.

Witness my hand and official seal, at the city aforesaid, the 26th day of May, 1855.

JOHN BARTON BRECKENRIDGE, [SEAL.]
Comm'r.

The answer of Robinsonova Clarke, William Robinson, and Alice Octavia, his wife, and of the said William Robinson, in his own right, as one of the heirs-at-law of William Robinson, dec'd, and of Benjamin N. Robinson, to a bill exhibited against them and others in the circuit court of Norfolk city, by Amanda C. Jennings.

These respondents believe that the facts set forth in the bill are true, and unite in the prayer of the bill for the relief therein

claimed, so far as their respective rights are concerned, and severally submit themselves to the direction of the court in the premises. They do not admit, however, that the plaintiff is entitled to the full amount claimed by her, nor have they any knowledge of the gift of the slave Matty to the pl'ff as alleged by her, but in regard to these and all other matters they desire full justice to be done, and pray the judgment of the court thereon when the facts are fully ascertained.

WM. ROBINSON, for self and Wife;
And signed by W. R. for ROBINSONOVA CLARKE.
ALICE O. ROBINSON,
BENJ. N. ROBINSON.

T. TAYLOR, *P. D.*

The Answer of John F. Callan to a Bill exhibited against him and others by Amanda C. Jennings, in the circuit court of Norfolk city.

This respondent answering says, that he admits the facts stated in said bill in reference to himself to be true, and that he has no objection to pay the debt due by him to such person as the court may direct by a decree in said cause.

JOHN F. CALLAN.

Whereupon, on motion of the plaintiff, by counsel, this cause was set for hearing, as to the defendants, James R. Jennings, Robinsonova Clarke, William Robinson and Alice Octavia his wife, and Benjamin N. Robinson and John F. Callan.

On the 6th day of June, 1855, there was filed among the papers in this cause, annexed to the printed copy of the order, publication made therein, an affidavit in these words, to wit:

W. S. Forrest made oath before me, that the above notice was published in the Southern Argus 4 weeks, according to law.

Norfo., June 6, 1855.

WM. D. ROBERTS, JR., *J. P.*

And now, at this day, to wit, at a circuit court of the city of Norfolk, continued by adjournment, and held at the court-house of the said city on the same day and year first hereinbefore mentioned, to wit, on Wednesday, the sixth day of June, eighteen hundred and fifty-five.

The defendant, John Brooks, who is a non-resident of the State of Virginia, and against whom the plaintiff appears to have proceeded in the mode prescribed by law, failing to appear and answer the bill, on motion of the plaintiff, by her counsel, the bill is taken for confessed as to the said defendant; and the cause coming on to be heard as to the other defendants upon the bill and exhibits, and on the answers of the adult defendants, and of the infant defendant, James Jennings Brooks, by his guardian ad litem, John T.

Francis, assigned to defend him in this suit and general replication, was argued by counsel; on consideration whereof the court doth adjudge, order and decree, that a commissioner of this court take the following accounts:

1st. An account of the transactions of the defendant, Needler R. Jennings, as curator, and also as executor of Alice C. Jennings, deceased, and of the debts, if any due by the said estate.

2d. An account of the real and personal estate held by the said Alice C. Jennings at the time of her death, subject to be disposed of by her will.

3. An account showing the amount received by the defendants, Robinsonova Clarke, Alice Octavia Robinson, and by Indiana H. Brooks, deceased, daughter of the said Alice C. Jennings, from the estate of their uncle, Needler Robinson, under his will.

4th. An account of any payments made by the defendant, Needler R. Jennings, to any of the legatees of the said Alice C. Jennings, and also an account of any moneys received by the said Needler R. Jennings for rent or otherwise, not properly embraced in his account as executor or curator, but for which he is accountable to the legatees of the said Alice C. Jennings.

5th. An account showing the amount due by the defendant, John F. Callan, for the purchase of the real premises in the city of Washington, in the proceedings mentioned.

6th. A legatee and distributee account, showing the disposition to be made of the estate of said Alice C. Jennings, under her will; and

7th. Such other accounts and statements as any of the parties may desire, or may be deemed proper by the commissioner, which accounts he will state and report to the court.

And the court doth further adjudge, order and decree, that Tazewell Tayler and Westwood A. Todd, who are hereby appointed commissioners for that purpose, sell at public auction to the highest bidder the real premises on Duke street, in the city of Norfolk, in the proceedings mentioned, described in Exhibit C, filed with the bill, first giving thirty days' notice of the time and place of sale by advertisement in two or more of the newspapers published in the city of Norfolk, and at the court-house door of this city, the sale to be made on a credit of nine and eighteen months, with interest from the day of sale, when possession of the premises shall be delivered to the purchaser, (except for the expenses of sale, which shall be for cash,) and bonds, with good security, payable to the said commissioners, to be given by the purchaser for the said payments, and title to said premises retained until the said bonds are paid, and until further directions, and which said bonds, together with a report of sale, the said commissioner will return to court.

And it is further ordered and decreed, that the notice of the time and place of taking the accounts hereby ordered, be published

by the commissioner in the Southern Argus, a newspaper published in this city, once a week for four successive weeks, and notice in the same way be given to the creditors, if any, of the said Alice C. Jennings to come forward and prove their claims against the said estate, and that such publication shall be equivalent to personal service on each person therein named.

STATE OF VIRGINIA,
City of Norfolk, to wit.

I, John Williams, clerk of the circuit court of the city of Norfolk aforesaid, in the State of Virginia, do hereby certify that the foregoing is a true copy of the record and proceedings in a certain suit in chancery now depending in the said court, in which Amanda C. Jennings is plaintiff, and Needler R. Jennings in his own right, and as executor of Alice C. Jennings, deceased, and others, are defendants, with all things touching the same, as fully and wholly as they now exist among the records of the said court.

In testimony whereof, I have hereunto annexed the seal of the said court and subscribed my name, this 26th day of July, 1856.

JNO. WILLIAMS. [SEAL.]

STATE OF VIRGINIA,
City of Norfolk, to wit.

I, Richard H. Baker, only judge of the circuit court of the city of Norfolk aforesaid, in the State of Virginia, do hereby certify that John Williams, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand, this 26th day of July, in the year eighteen hundred and fifty six.

RICH'D H. BAKER.

At a circuit court of the city of Norfolk continued by adjournment, and held at the court-house of the said city, on Wednesday, the tenth day of June, eighteen hundred and fifty-seven.

AMANDA C. JENNINGS, Plaintiff,
against
NEEDLER R. JENNINGS in his own right, and as executor of Alice C. Jennings, and as trustee in the deed of marriage settlement between John Brooks and his wife, Indiana H., now deceased, Robinsonova Clarke, James R. Jennings, William Robinson and Alice Octavia, his wife, Benjamin N. Robinson, John Brooks and James Jennings Brooks, the said last named being an infant under the age of twenty-one years, by John T. Francis, his guardian ad litem, assigned to defend him in this suit, and John F. Callan, Defendants.

This cause came on this day to be again heard on the papers formely read, and on the report of commissioner Robertson, taken and returned to court in pursuance of the decretal order made herein, on the sixth day of June, eighteen hundred and fifty-five, and also on the report of sale of the real premises in the proceedings mentioned by commissioners Taylor and Todd, made under said decree, to which last report there are no exceptions, and on the exception of the plaintiff to the report of commissioner Robertson, and was argued by counsel; on consideration whereof, the court doth adjudge, order and decree, that the report of sale be confirmed, and that the purchaser, William A. Graves, deposit in the Norfolk Savings Institution, to the credit of this cause, the amount of his two bonds when due, or before, at his option, given for the purchase money of the said real premises, returned by the commissioners of sale with their report, viz: one bond for one thousand four hundred and sixteen dollars and thirty-seven cents, with interest from the twenty-seventh day of October, eighteen hundred and fifty-six, and due July the twenty-seventh, eighteen hundred and fifty-seven; and another bond for one thousand four hundred and sixteen dollars and thirty-eight cents, due the twenty-seventh day of April, eighteen hundred and fifty-eight, with interest from the twenty-seventh day of October, eighteen hundred and fifty-six, till paid, which bonds the clerk of the court will deliver to the said Graves, upon his filing a certificate of the amount thereof from the cashier of Norfolk Savings Institution, as hereby directed; and it is further ordered by the court that the defendant Needler R. Jennings, executor of Alice C. Jennings, sell at public auction to the highest bidder for cash the slaves Mattie and her children, in the proceedings mentioned, and make return to the court of the sale thereof; and it is further ordered, that the defendant John F. Callan deposit in the Norfolk Savings Institution, to the credit of this cause, within thirty days after he shall have been served with a copy of this decree, the sum of three thousand dollars, with interest from the first day of January, eighteen hundred and fifty-six, being the amount due by him under his contract with William Robinson and Alice C. Jennings, bearing date the second day of November, eighteen hundred and forty, a copy of which is filed as an exhibit with the bill marked "D;" and the court not being advised of the proper judgment to be pronounced upon the exception of the plaintiff to the report of commissioner Robertson, doth, with a view to the more satisfactory ascertainment of the facts bearing upon the exception, recommit the report to the same commissioner, with directions to ascertain the exact amounts received by Needler R. Jennings, Indiana H. Jennings, Robinsonova Clarke, James R. Jennings, Alice Octavia Robinson, and Robert C. Jennings, as legatees of Needler Robinson, deceased, and when received, distinguishing principal from interest; and also inquire and report to the court whether the money

or any part thereof shown to be due by commissioner Robertson's report, and now sought to be distributed, was acquired under or derived from the second or residuary clause of Needler Robinson's will in the proceedings referred to, which accounts the said commissioner is required to examine and report to the court, with any matters, specially stated, deemed pertinent by himself or required by the parties to be stated, and the court reserves for further decision *and* all other questions arising on or out of the said report of commissioner Robertson.

A copy: JNO. WILLIAMS.

Abstract from the report of the commissioner's account No. 2, in the suit in chancery, pending in the circuit court of the city of Norfolk, in which Amanda C. Jennings is plaintiff, and Needler R. Jennings in his own right, and as executor of Alice C. Jennings, dec'd, and others, are defendants.

Personal Estate.

Bond of John F. Callan, of Washington, D. C., for the purchase money of real estate there sold by testatrix in her lifetime, $3,000, and interest from 1st Jan., 1856, up to which time the ex'or has accounted for the interest. (See account No. 1.)

STATE OF VIRGINIA, *City of Norfolk, to wit.*

I, John Williams, clerk of the circuit court, of the city of Norfolk aforesaid, do hereby certify that the copy of the decree in the first and second pages of this sheet, in the suit of Amanda C. Jennings, plaintiff, and Needler R. Jennings in his own right, and as executor of Alice C. Jennings, dec'd, and others, defendants, is a true copy from the records of the said court, and that the above abstract from the commissioner's report taken and filed in the said suit, is a true copy of so much of the said report as it purports to be. In testimony whereof, I have hereto annexed the seal of the said court, and subscribed my name, this twenty-first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Commonwealth the eighty-second.

[SEAL.] JNO. WILLIAMS.

VIRGINIA, *City of Norfolk, to wit.*

I, Richard H. Baker, only judge of the circuit court of the city of Norfolk, in the State of Virginia, do hereby certify that John Williams, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand this 21st day of September, in the year eighteen hundred and fifty-seven.

RICH'D H. BAKER.

Thereupon the complainants by their solicitors, and the defendants by their solicitors, file in court here the following agreement, to wit:

Circuit Court of the Dist. of Col.

STATHAM, SMITHSON & Co.
vs.
JOHN F.C ALLAN and
RICHARD P. CALLAN.
} No. 1,165.—In Ch'y.

AUSTIN SHERMAN
vs.
JOHN F. CALLAN, MICHAEL P. CALLAN, and others.
} No. 1,192.—Same.

It is hereby agreed that the above entitled causes shall be held and considered as consolidated, and argued together; and that the proofs taken or filed in one shall be applicable to the other as if taken or filed therein; and further, that but one decree shall be made by the court in said causes, which decree shall be such as would in the judgment of the court be proper, had all the complainants joined in either suit.

CHILTON, DAVIDGE & INGLE,
For Compl'ts,
J. C. BRENT & W. S. COX,
For Def'ts.

March 10, '58.

AUSTIN SHERMAN, Complainant,
vs.
JOHN F. CALLAN AND SARAH A. CALLAN his wife, Michael P. Callan, Nicholas Callan, Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, (the said Mary Elizabeth, Margaret Anne, James Nicholas, John, Charles Constantine, Rosalia, Clara, and Hellen, being the children of the said John F. Callan, and all of them, except the said Mary Elizabeth and Margaret Anne, being infants under the age of twenty-one years,) Michael A. Guista, Mary Ann Nalley, William Robinson and Alice Octavia Robinson his wife, Benjamin N. Robinson, (the said William and Benjamin N. being the heirs-at-law of William Robinson, deceased,) Needler R. Jennings, (executor of the last will and testament of Alice C. Jennings, deceased, and trustee under the deed of marriage settlement between John Brooks and his wife Indiana H. Brooks, now deceased,) John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, Defendants.
} No. 1,192.

1854

Be it remembered that heretofore, to wit, on the ninth day of August, in the year one thousand eight hundred and fifty six, the said complainant, by Davidge and Ingle, esqs., his solicitors, filed in court here the following bill of complaint and exhibits, to wit:

To the Judges of the Circuit Court of the District of Columbia:

Austin Sherman brings this his bill against John F. Callan and Sarah A. Callan his wife, Michael P. Callan, Nicholas Callan, Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, (the said Mary Elizabeth, Margaret Anne, James Nicholas, John, Charles Constantine, Rosalia, Laura, Clara, and Hellen being the children of the said John F. Callan, and all of them, except said Mary Elizabeth and Margaret Anne, being infants under the age of twenty-one years,) Michael A. Guista, Mary Ann Nalley, William Robinson and Alice Octavia Robinson his wife, Benjamin N. Robinson, (the said William and Benjamin N. being the heirs-at-law of William Robinson, deceased,) Needler R. Jennings, (executor of the last will and testament of Alice C. Jennings, deceased, and trustee under the deed of marriage settlement between John Brooks and his wife Indiana H. Brooks, now deceased,) John Brooks, James Jennings Brooks, Robinsonova Clark, and Amanda C. Jennings.

And thereupon your orator complains and says, that on the second day of April, 1855, he recovered on the law side of this court six several judgments against the said John F. Callan; one for the sum of two thousand dollars damages, to be released on the payment of one thousand three hundred dollars, with interest thereon from the ninth day of April, 1853, until paid, and eleven dollars and twenty-six cents costs; another for the sum of two thousand dollars damages, to be released on the payment of one thousand four hundred and ninety-four dollars, with interest from the thirteenth day of April, 1853, until paid, and eleven dollars and twenty-six cents costs; another for the sum of one thousand two hundred dollars damages, to be released on the payment of eight hundred and seventy-five dollars, with interest thereon from the twenty-second day of March, 1853, until paid, and eleven dollars and twenty-six cents costs; another for the sum of one thousand dollars damages, to be released on the payment of seven hundred and fifty-five dollars, with interest thereon from the fifteenth day of April, 1853, until paid, and eleven dollars and twenty-six cents costs; another for the sum of one thousand five hundred dollars damages, to be released on the payment of one thousand and seventy-five dollars, with interest thereon from the nineteenth day of April, 1853, until paid, and eleven dollars and twenty-six cents costs; and another for the sum of three thousand dollars damages, to be released on the payment of two thousand

one hundred and forty-three dollars, with interest thereon from the eighteenth day of May, 1853, until paid, and eleven dollars and twenty-six cents costs; all of which will more fully and at large appear by reference to said judgments, short copies of which are herewith filed as parts of this bill, marked Exhibits A, B, C, D, E, and F.

Your orator further shows that the said judgments are wholly unpaid; that writs of fieri facias have been issued upon them, and returned "nulla bona" by the marshal of the District of Columbia; and that there is no property of the said John F. Callan liable for the said judgments, or any part thereof, under legal process.

Your orator further shows that on the thirty-first day of March, in the year 1825, Henry M. Morfit by his deed of that date sold and conveyed to the said William Robinson, since deceased, trustee for the said Alice C. Jennings, also since deceased, lot numbered eight, (8,) in square numbered four hundred and fifty-six, (456,) with the appurtenances, in the city of Washington, in this District, which conveyance was in trust for the said Alice C. Jennings, her heirs and assigns. And your orator files herewith a copy of said conveyance, marked Exhibit G, and prays that the same may be taken as a part of this bill.

Your orator further shows that on the second day of November, 1840, by indenture of that date made between William Robinson (trustee of the said Alice C. Jennings) and the said Alice C. Jennings of the one part, and the said John F. Callan of the other part, the said property was leased and demised to the said John F. Callan for the term of the natural life of the said Alice C. Jennings upon and for the yearly rent of two hundred dollars, payable quarterly, and clear of all taxes, repairs, and charges; in which said indenture, after a recital that the said Callan had contracted to purchase the fee simple in said property after the decease of the said Alice C. Jennings for three thousand dollars, to be paid to said Robinson, his heirs or assigns, within sixty days after her death, it was covenanted and agreed by the said Callan so to purchase; and by the said Alice C. Jennings, that upon the payment of the said sum of three thousand dollars, as aforesaid, Robinson and his heirs should stand seized in fee of said property to the use of said Callan, his heirs and assigns, until a conveyance should be made; and after such conveyance, said Callan should hold free and clear of the said Alice C. Jennings; and by the said Robinson, that upon payment by said Callan of said sum of three thousand dollars, and of the rents, dues, and taxes, and performance of his covenants in said indenture, he, the said Bobinson, would convey all his estate and interest in said property to the said John F. Callan, his heirs and assigns forever; all of which will more fully appear by reference to said indenture recorded in Liber W. B. No. 86, folios 107, &c., one of the land records of Wash-

ington county, in the District of Columbia aforesaid. And your orator files herewith an abstract of said indenture, marked Exhibit H, and prays that the same may be taken as part hereof.

Your orator shows, that at the time of the making of said indenture, said property was in the use and occupation of said John F. Callan, and has so continued to the present time; that the said Alice C. Jennings departed this life in May, 1851; and that the said John F. Callan having tendered the said sum of three thousand dollars, according to the terms of said indenture, and having in all other respects complied with and performed the conditions and stipulations thereof, has thereby become entitled to the conveyance of the said property in fee simple.

Your orator further shows, that the said Alice C. Jennings left a last will and testament, bearing date the eighth day of October, 1839, (a copy whereof is herewith filed, marked Exhibit I, and prayed to be taken as part hereof,) whereby, among other dispositions, she devised her estate and interest in the said property to her four daughters, Robinsonova Clarke, (who, at the time of the execution of the said will, was the relict of Thomas Clarke, deceased,) Indiana H. Jennings, Alice Octavia Jennings, (now intermarried with the said William Robinson, heir-at-law of William Robinson, deceased,) and Amanda C. Jennings, to be equally divided amongst them, share and share alike, and appointed her brother, William Robinson, now deceased, (who, at the time of the execution of said will, was her trustee as aforesaid,) and her son, Needler R. Jennings, executors; that the said William Robinson, trustee, and so appointed executor, died intestate some years before the decease of the said Alice C. Jennings, leaving as his heirs-at-law his sons, William Robinson and Benjamin N. Robinson; that Needler R. Jennings, the other executor appointed by said will, upon the admission thereof to probat, which took place in the corporation court of the city of Norfolk, in Virginia, on the twenty-seventh day of October, 1854, duly qualified as such executor, and has since continued to act as such; that the said devisees, Robinsonova, Indiana H., Alice Octavia, and Amanda C., survived the said testatrix, and, except the said Indiana H., are now living; that the said Indiana H., in October, 1851, intermarried with John Brooks, by whom she had issue, an only child, James Jennings Brooks, and soon afterwards died, leaving her said husband and child surviving her; that a marriage settlement was before marriage executed between the said Indiana H. and John Brooks, and that the said Needler R. Jennings was made trustee in said deed of settlement; and your orator files herewith a copy of said deed, marked Exhibit K, and prays that the same may be taken as part hereof.

Your orator further shows, that after the execution of the above mentioned lease, the said John F. Callan added valuable improve-

ments to said property, which as improved was in the year 1854, and at the time of the deed hereinafter mentioned to Michael P. Callan, worth upwards of fifteen thousand dollars.

Your orator further shows, that the said John F. Callan and Sarah A. Callan, his wife, by deed dated the sixteenth day of October, 1854, conveyed, or pretended to convey, said property, with the appurtenances, to the said Michael P. Callan, the brother of the said John F., for the pretended consideration of four thousand nine hundred dollars, which said deed was recorded on the fourteenth day of April, 1855, in Liber J. A. S. No. 95, folios 489, &c., one of the land records aforesaid. And your orator avers and charges that the statement in said deed of the consideration therein set forth having been paid is utterly false, and that said deed was purely voluntary, and was designed to delay, hinder and defraud your orator in the collection and recovery of his just debts, and had so delayed, hindered, and defrauded him. And your orator is advised that even if said consideration had been paid bona fide, which is utterly denied, the said Michael P. Callan would not be entitled to retain said property as against your orator, but would be treated in a court of equity merely as a mortgagee to the extent of the money paid by him, with interest thereon.

And your orator further shows, that when said last mentioned deed was executed, the said John F. Callan was indebted largely, and beyond his means of making payment, and represented himself to be insolvent; and that said Michael P. Callan knew the same.

Your orator further shows, that said deed purports to convey not only the property above mentioned, but also the interest and estate of the said John F. Callan in all other lots and premises in said city of Washington, the extent of which said interest and estate your orator does not know with certainty, but he believes, and therefore avers and charges, that the same was considerable, exceeding in value three thousand dollars.

Your orator further shows that on or about the fifteenth day of October, 1852, the said John F. Callan being indebted unto Mary Ann Nalley, the above named defendant, in the sum of four thousand seven hundred dollars, or thereabouts, for money loaned by her to him, and the said Mary Ann Nalley becoming apprehensive that he was in failing circumstances, and having no security for her said debt, he, the said John F. Callan, by his deed of that date, recorded in Liber J. A. S. No. 47, folios 304, &c., one of the land records aforesaid, conveyed unto her absolutely in fee simple the west half of lot numbered seven, (7,) in square numbered four hundred and fifty-six, (456,) in the said city of Washington; and also lot numbered twenty-two, (22,) in square numbered six hundred and eighty-seven, (687;) and parts of lots numbered sixteen (16) and seventeen, (17,) in square numbered four hundred and

fifty-four, (454,) situated also in said city, together with the appurtenances to said property belonging, an abstract of which said deed is filed herewith, marked Exhibit L, and prayed to be taken as part of this bill.

Your orator is ignorant whether said last mentioned deed was intended as a security for said loan from Mary Ann Nalley, or as an absolute sale and transfer of the premises thereby conveyed, but avers and charges that the said John F. Callan claimed that it was intended as such security merely, and in or about the month of December last applied to the said Mary Ann Nalley, and insisted upon his right to redeem said premises thereby conveyed, on payment of the debt and interest; and that the said Mary Ann Nalley then consented that said deed should be considered only as a mortgage to secure the payment of the said debt and interest. And your orator shows that thereupon the said John F. Callan paid said debt and interest, and the said Mary Ann Nalley executed and delivered to him a conveyance of the said premises in favor of the above named defendant, Nicholas Callan, (also a brother of the said John F. Callan,) his heirs and assigns, and in trust for the said Sarah A. Callan, the wife of the said John F. Callan, and the said Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan, their children, or some of them; which said conveyance your orator avers was made at the instance of the said John F. Callan, and though executed as far back as December last, has never been recorded.

Your orator further shows that the amount paid as aforesaid to Mary Ann Nalley was about five thousand dollars; that said payment was made by said John F. Callan in person, and that in the money so paid, his wife (for whom said conveyance was made in trust) had no interest, but that, on the contrary, said conveyance to Nicholas Callan was purely voluntary and without any valuable consideration, and intended to hinder, delay, and defraud the creditors of said John F. Callan in the collection of their just debts.

Your orator has in vain endeavored to ascertain the contents of said deed, and especially the trusts thereof, and the party or parties named therein as beneficiaries or cestuis que trust and the division of interests under the same, and is unable to state said contents more specifically than he has done. And he is advised that as against creditors of said John F. Callan the said deed is absolutely and utterly void.

Your orator further shows, that on the fourteenth day of May, 1851, the said John F. Callan, by his deed of that date, recorded in Liber J. A. S. No. 25, folios 83, &c., one of the land records

aforesaid, conveyed the said west half of lot numbered seven (7) in square numbered four hundred and fifty-six, (456,) to Nicholas Callan, the defendant above named, in trust to secure to the above named defendant, Michael A. Guista, the payment of the promissory note in the said deed mentioned, the said note being for the sum of two thousand two hundred dollars, bearing even date with said deed, and payable one year after date, and upon further trust, if default should be made in payment of said note, to sell the said property, and apply the proceeds of sale to the payment of said debt; and your orator files herewith an abstract of said deed of trust marked Exhibit M, and prays that the same may be taken as a part of this bill.

Your orator does not admit that the debt mentioned in said deed of trust is still unpaid, but charges the contrary, and calls for proof of any portion thereof being unpaid. And your orator shows, that the value of the property conveyed by said deed of trust is not less than seven thousand dollars; and that even should there be any balance of said debt still unpaid, the proceeds of said property will, after satisfying such balance, leave a large amount to be applied to your orator's aforesaid judgments; and your orator is willing, and hereby offers to redeem the said property, and pay to the said Michael A. Guista whatever sum, upon his accounting, may be shown to be due on account of his said debt.

You orator further shows, that the said William Robinson and Alice Octavia Robinson, his wife, Benjamin N. Robinson, Needler R. Jennings, John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, reside out of the District of Columbia and beyond the jurisdiction of this honorable court, and that the said James Nicholas Callan, Charles Constantine Callan, John Callan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan, and Janmes Jennings Brooks are infants, under the age of twenty-one years.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written, they are respectively required to answer, that is to say:

1. Whether the judgments aforesaid were recovered, and said writs issued thereon and returned as alleged.

2. Whether any portion, and how much, of the sum of four thousand nine hundred dollars mentioned in the deed to Michael P. Callan, dated October 16th, 1854, was ever paid by him; and if so, at what time, in what manner, in whose presence, and to whom.

3. Whether said John F. Callan is now in the occupation of said lot 8, in square 456, and the improvements, or any part thereof, and what part, and how long he has so occupied, and whether he has paid rent for the same since the execution of said deed to Michael P. Callan, and to whom he has paid such rent, if any, and when, and how much.

4. Whether said John F. Callan has collected any rents for or on account of said lot 8, in square 456, and the improvements, or any portion of said property; and if so, at what times, how much, and from what portion of said property, and from what persons, and whether he has paid over said rents or any part thereof to the said Michael P. Callan, or according to his orders or directions; and if he has not so paid over, whether the same has been demanded by the said Michael P. Callan, and when, and whether an account has been kept by said Michael P. Callan of the rents of said property, or any and what parts of said rents; and if such account has been kept, what are the contents thereof.

5. Whether the said John F. Callan, or Michael P. Callan, and which of them, has paid any sum or sums of money on account of taxes or repairs of said property, or any part thereof, since the date of said deed to Michael P. Callan; and if so, how much has been so paid, and when.

6. Whether said sum of three thousand dollars, or any part thereof, and what part, has ever been offered or tendered to be paid to the heirs-at-law of said William Robinson, deceased, or either of them, or to his personal representative, or to the devisees of said Alice C. Jennings, deceased, or any of them, or to her personal representative, Needler R. Jennings; and if so, when, and to whom said offer or tender thereof was made.

7. Whether the rents, dues, and taxes under said lease were paid and the covenants and stipulations thereof performed by the said John F. Callan; and if default was made, in what said default consisted.

8. Whether lot No. 8, in square No. 456, with the improvements and appurtenances, at the time of said conveyance to Michael P. Callan, was or was not worth upwards of fifteen thousand dollars, and what was the value of the same, and the interest therein conveyed by said deed to Michael P. Callan, and what was the interest of the said John F. Callan in any and all lots and premises in said city of Washington at the time of the execution of said deed, and in what pieces or parcels of ground said interest existed, and what was the value of such interest.

9. Whether the said John F. Callan was or was not indebted unto the said Mary Ann Nalley as alleged, or in any amount; and if any, what amount, and whether the alleged deed to her was made to secure said debt, and whether the said John F. Callan has ever asserted and claimed said deed to be merely a security for

said debt, and not designed to work an absolute transfer of the property conveyed to Mary Ann Nalley, and whether he ever applied to her to redeem said security, and whether he did so redeem; and if so, on what terms.

10. Whether the alleged sum of five thousand dollars, or thereabouts, was paid to said Mary Ann Nalley, and whether in consideration thereof she executed the alleged deed to Nicholas Callan, or any deed to him; and if any, what were the contents of said deed, and at whose instance the same was made, and when, where, in whose presence, and by whom said payment was made, and what was the consideration of said deed, and to whom said deed was delivered when executed.

11. Whether the said deed is or is not now in the possession of the said Nicholas Callan; and if so, how long it has been there, and by whose directions, and whether said Nicholas Callan was requested or directed not to record the same; and if so, by whom, and why said deed was not recorded.

12. Whether any and what balance remains unpaid of the debt recited in the alleged deed of trust to Nicholas Callan to secure the promissory note in favor of Michael A. Guista, and what payments have been made on said debt, and when, and the respective amounts.

And that the said deed from John F. Callan to Michael P. Callan, and the said deed from Mary Ann Nalley to Nicholas Callan, may be decreed to be utterly null and void, and that the property mentioned in said deeds may be sold to pay your orator his aforesaid judgments; and that out of the proceeds of said sale the said sum of three thousand dollars, and any interest due thereon, may be paid to the said Needler R. Jennings, executor of the said Alice C. Jennings, or to such other person or persons as may be entitled to receive the same; and that your orator may have such other and further relief as his case may require.

May it please your honors to grant unto your orator an order of publication, giving notice to the said William Robinson, and Alice Octavia, his wife, Benjamin N. Robinson, Needler R. Jennings, John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, who are non-residents of this District as before stated, of the substance and objects of this bill, and warning them to appear in this court in person, or by solicitor, on or before a certain day, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; and also a writ of subpœna against the said John F. Callan, Sarah A. Callan, Michael P. Callan, Nicholas Callan, Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, Michael A. Guista, and Mary Ann Nalley, commanding them to appear in this court on a day to be named, to answer the premises, and abide by and perform such decree as may be

passed therein; and further, to issue commissions to appoint guardians for and take the answers of the said infants, James Jennings Brooks, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan.

And your orator, as in duty bound, will ever pray, &c.

DAVIDGE & INGLE,
Solicitors for Compl't.

The defendant, John F. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

The defendant, Michael P. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, and 8.

The defendant, Nicholas Callan, is required to answer the interrogatories numbered respectively 9, 10, 11, and 12.

The defendant, Michael A. Guista, is required to answer the interrogatory numbered 12.

Exhibits A, B, C, D, E, and F, filed with Complainants' Bill.

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,000 damages and costs.

Damages to be released on payment of $755, with interest from 15th April, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,500 damages and costs.

Damages to be released on payment of $1,075, with interest from 19th Ap'l, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

said debt, and not designed to work an absolute transfer of the property conveyed to Mary Ann Nalley, and whether he ever applied to her to redeem said security, and whether he did so redeem; and if so, on what terms.

10. Whether the alleged sum of five thousand dollars, or thereabouts, was paid to said Mary Ann Nalley, and whether in consideration thereof she executed the alleged deed to Nicholas Callan, or any deed to him; and if any, what were the contents of said deed, and at whose instance the same was made, and when, where, in whose presence, and by whom said payment was made, and what was the consideration of said deed, and to whom said deed was delivered when executed.

11. Whether the said deed is or is not now in the possession of the said Nicholas Callan; and if so, how long it has been there, and by whose directions, and whether said Nicholas Callan was requested or directed not to record the same; and if so, by whom, and why said deed was not recorded.

12. Whether any and what balance remains unpaid of the debt recited in the alleged deed of trust to Nicholas Callan to secure the promissory note in favor of Michael A. Guista, and what payments have been made on said debt, and when, and the respective amounts.

And that the said deed from John F. Callan to Michael P. Callan, and the said deed from Mary Ann Nalley to Nicholas Callan, may be decreed to be utterly null and void, and that the property mentioned in said deeds may be sold to pay your orator his aforesaid judgments; and that out of the proceeds of said sale the said sum of three thousand dollars, and any interest due thereon, may be paid to the said Needler R. Jennings, executor of the said Alice C. Jennings, or to such other person or persons as may be entitled to receive the same; and that your orator may have such other and further relief as his case may require.

May it please your honors to grant unto your orator an order of publication, giving notice to the said William Robinson, and Alice Octavia, his wife, Benjamin N. Robinson, Needler R. Jennings, John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, who are non-residents of this District as before stated, of the substance and objects of this bill, and warning them to appear in this court in person, or by solicitor, on or before a certain day, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; and also a writ of subpœna against the said John F. Callan, Sarah A. Callan, Michael P. Callan, Nicholas Callan, Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, Michael A. Guista, and Mary Ann Nalley, commanding them to appear in this court on a day to be named, to answer the premises, and abide by and perform such decree as may be

passed therein; and further, to issue commissions to appoint guardians for and take the answers of the said infants, James Jennings Brooks, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan.

And your orator, as in duty bound, will ever pray, &c.

DAVIDGE & INGLE,
Solicitors for Compl't.

The defendant, John F. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

The defendant, Michael P. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, and 8.

The defendant, Nicholas Callan, is required to answer the interrogatories numbered respectively 9, 10, 11, and 12.

The defendant, Michael A. Guista, is required to answer the interrogatory numbered 12.

Exhibits A, B, C, D, E, and F, filed with Complainants' Bill.

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,000 damages and costs.

Damages to be released on payment of $755, with interest from 15th April, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,500 damages and costs.

Damages to be released on payment of $1,075, with interest from 19th Ap'l, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

said debt, and not designed to work an absolute transfer of the property conveyed to Mary Ann Nalley, and whether he ever applied to her to redeem said security, and whether he did so redeem; and if so, on what terms.

10. Whether the alleged sum of five thousand dollars, or thereabouts, was paid to said Mary Ann Nalley, and whether in consideration thereof she executed the alleged deed to Nicholas Callan, or any deed to him; and if any, what were the contents of said deed, and at whose instance the same was made, and when, where, in whose presence, and by whom said payment was made, and what was the consideration of said deed, and to whom said deed was delivered when executed.

11. Whether the said deed is or is not now in the possession of the said Nicholas Callan; and if so, how long it has been there, and by whose directions, and whether said Nicholas Callan was requested or directed not to record the same; and if so, by whom, and why said deed was not recorded.

12. Whether any and what balance remains unpaid of the debt recited in the alleged deed of trust to Nicholas Callan to secure the promissory note in favor of Michael A. Guista, and what payments have been made on said debt, and when, and the respective amounts.

And that the said deed from John F. Callan to Michael P. Callan, and the said deed from Mary Ann Nalley to Nicholas Callan, may be decreed to be utterly null and void, and that the property mentioned in said deeds may be sold to pay your orator his aforesaid judgments; and that out of the proceeds of said sale the said sum of three thousand dollars, and any interest due thereon, may be paid to the said Needler R. Jennings, executor of the said Alice C. Jennings, or to such other person or persons as may be entitled to receive the same; and that your orator may have such other and further relief as his case may require.

May it please your honors to grant unto your orator an order of publication, giving notice to the said William Robinson, and Alice Octavia, his wife, Benjamin N. Robinson, Needler R. Jennings, John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, who are non-residents of this District as before stated, of the substance and objects of this bill, and warning them to appear in this court in person, or by solicitor, on or before a certain day, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; and also a writ of subpœna against the said John F. Callan, Sarah A. Callan, Michael P. Callan, Nicholas Callan, Mary Elizabeth Callan, Margaret Anne Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, Michael A. Guista, and Mary Ann Nalley, commanding them to appear in this court on a day to be named, to answer the premises, and abide by and perform such decree as may be

passed therein; and further, to issue commissions to appoint guardians for and take the answers of the said infants, James Jennings Brooks, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan.

And your orator, as in duty bound, will ever pray, &c.

DAVIDGE & INGLE,
Solicitors for Compl't.

The defendant, John F. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

The defendant, Michael P. Callan, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, and 8.

The defendant, Nicholas Callan, is required to answer the interrogatories numbered respectively 9, 10, 11, and 12.

The defendant, Michael A. Guista, is required to answer the interrogatory numbered 12.

Exhibits A, B, C, D, E, and F, filed with Complainants' Bill.

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,000 damages and costs.

Damages to be released on payment of $755, with interest from 15th April, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $1,500 damages and costs.

Damages to be released on payment of $1,075, with interest from 19th Ap'l, 1853, till paid.

Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $3,000 damages and costs.
Damages to be released on payment of $2,143, with interest from 18th May, 1853, till paid.
F. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $2,000 damages and costs.
Damages to be released on payment of $1,310, with interest from 9th April, 1853, till paid.
Fi. fa. ret'd Nulla bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
v.
JOHN F. CALLAN.

2d April.—Judgment for $2,000 damages and costs.
Damages to be released on payment of $1,494, with interest from 13th April, 1853, till paid.
Fi. fa. ret'd N. bona.

Cost..... $11 26

Test: JNO. A. SMITH, *Cl'k.*

Circuit Court, Washington county, D. C.—March Term, 1855.

AUSTIN SHERMAN
vs.
JOHN F. CALLAN.

3d April.—Judgment for $1,200 damages and costs.
Damages to be released on payment of $875, with interest from 22d March, 1853, till paid.
Fi. fa. ret'd N. bona.

Cost..... $11 26.

Test: JNO. A. SMITH, *Cl'k.*

Exhibit "G," filed with the Complainants' Bill.

Conveyance from Henry M. Morfit to William Robinson, dated 31st March, 1825. (Copied ante, page 116 et seq.)

Exhibit H, filed with the Complainants' Bill.

WILLIAM ROBINSON and ALICE C. JENNINGS
to
JOHN F. CALLAN.

Deed of lease, dated Nov. 2, 1840, recorded in Liber W. B. No. 86, folios 107, &c. Lot No. 8, in square No. 456, in the city of Washington; annual rent of $200, payable quarterly, clear of all taxes, repairs, and charges. For natural life of Mrs. Alice C. Jennings.

John F. Callan covenants to pay $3,000 to said Robinson, trustee, for purchase of the fee simple, within sixty days after the death of said Mrs. Jennings. Mrs. Jennings covenants, that upon such payment, said trustee shall stand seized to use of said Callan in fee simple until conveyance made; and after such conveyance, said Callan shall stand seized, free and clear of said Alice C. Jennings, her heirs and assigns. Robinson covenants, upon payment of said $3,000 as aforesaid, and of all rents, dues, and taxes, and performance of said Callan's covenants, to convey to said Callan in fee simple.

True extract.
Test: JNO. A. SMITH, *Cl'k.*

Exhibit "I," filed with the Complainants' Bill.

Copy will of Mrs. Alice C. Jennings. (Copied ante, page 129 et seq.)

Exhibit "K," filed with the Complainants' Bill.

Copy marriage settlement executed on the marriage of Indiana H. Jennings with John Brooks, dated 14th October, 1851. (Copied ante, page 125 et seq.)

Exhibits "L" and "M," filed with Complainants' Bill.

JOHN F. CALLAN
to
NICHOLAS CALLAN.

Deed of trust, dated 14th May, 1851, recorded 4th June, 1851, Liber J. A. S. No. 25, folios 83, &c., conveying all that piece or parcel of ground, in the said city of Washington, known as the west part of lot seven, (7,) in square 456, together with all and singular the buildings, &c., in trust to secure Michael A. Giusta in the sum of twenty-two hundred dollars, current money, for which sum the said John F. Callan hath given his promissory note, bearing even date herewith, and payable in one year from date.

True extract.
Test: JNO. A. SMITH, *Cl'k.*

JOHN F. CALLAN AND WIFE
to
MARY ANN NALLEY.

Deed dated 15th October, 1852, recorded 11th November, 1852, Liber J. A. S. No. 47, folios 504, &c., conveying all those pieces or parcels of ground in the said city of Washington, known as the west half of lot numbered seven (7) in square numbered four hundred and fifty-six, (456,) lot numbered twenty-two (22) in square numbered six hundred and eighty-seven (687;) also an area of ground one hundred feet by seventeen feet, in square four hundred and fifty-four, (454,) beginning for the same at a point on the south line of lot 17 in said square 454, where it borders on the alley, thirty-seven feet from the southeast corner of said lot 17, and running west in the north line of the alley seventeen feet, then with that width north one hundred feet parallel to the fifteen-foot alley in said square, being parts of lots 16 and 17 in said square 454, together with the buildings, &c.

True extract.

Test: JNO. A. SMITH, *Cl'k.*

Thereupon subpœnas issued as prayed, returnable to September rules, and were returned by the marshal "summoned all."

Filed with the complainants' said bill is an affidavit in the words and figures following, to wit:

DISTRICT OF COLUMBIA,
Washington County, to wit.

Be it remembered, that on this ninth day of August, 1856, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally appeared Christopher Ingle, solicitor and of counsel for the complainants in the foregoing and annexed bill, and made oath that he has made diligent inquiry as to the residence of William Robinson, Alice Octavia Robinson, Benjamin N. Robinson, Needler R. Jennings, John Brooks, James Jennings Brooks, Robinsonova Clarke, and Amanda C. Jennings, defendants named in said bill, and that he verily believes that they are non-residents of the District of Columbia, as averred in said bill.

Sworn before—

F. J. MURPHY, *J. P.*

And by an order made in this cause, dated the 5th day of September, 1856, after reciting the complainants' said bill, and stating the objects of this suit, it is thereupon adjudged and ordered that the complainant, by causing a copy of this order to be inserted in some newspaper published at the city of Washington once in each of six successive weeks before the third Monday of January next, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court in person or by

solicitor on or before the said third Monday of January next, to answer the premises, and show cause, if any they have, why a decree ought not to pass as prayed, the first publication to be at least four months before the said day last afs'd.

JAS. S. MORSELL, *Ass't Judge, &c.*

And the said defendants appeared in court here by John C. Brent and W. S. Cox, esqs., and said cause was continued regularly until the seventh day of November, one thousand eight hundred and fifty-six, when Needler R. Jennings, one of the defendants, filed in court here, by Henry M. Morfit, esq., his solicitor, the following answer, to wit:

The answer of Needler R. Jennings, in his own right, as one of the children and devisees of Alice C. Jennings, dec'd; 2dly, as executor, and sole surviving executor, under the last will and testament of said Alice C. Jennings; and 3dly, as trustee under the marriage settlement between John Brooks and Indiana H. Jennings, said Indiana having since died.

This respondent reserving to himself, in his several capacities aforesaid, all manner of objection and defences to the many uncertainties, defects, and errors in the bill of complaint of the complainant in this cause, for answer to so much thereof as it is necessary for him now to answer, answers and says:

That the property named in the said bill of complaint was, as he believes, conveyed to William Robinson in trust for said Alice C. Jennings, her heirs and assigns, as is alleged; and also that the same was leased to John F. Callan for $200 per annum, under a contract that he should purchase out the fee in said property after the death of said Alice, for $3,000, as set forth in the complainants' Exhibit .

That said Alice died in 1851, leaving said property not specifically as stated in the bill, but in the general terms of "the residue of her estate, real, personal, and mixed," to her four daughters, Robinsonova Clarke, Indiana H. Jennings, Alice Octavia Jennings, and Amanda C. Jennings, to be equally divided among them, share and share alike.

That John H. Brooks intermarried with Indiana H. Jennings, one of said devisees and children, and she died leaving an infant, James J. Brooks, (and not John J. Brooks,) as stated in one part of the bill of complaint, and which infant is still living. That previous to the said marriage between said John Brooks and said Indiana, there was a marriage settlement made between them, as shown in the complainants' bill as Exhibit K, dated 14 Oct., 1851.

That by said settlement all the estate of said Indiana, and her undivided interest in the estate of her mother, and in all other

property, was conveyed to this respondent, in trust for her and her assigns, and to be held for her and them, free and clear of her said husband and of his control, and of his debts, &c.

That said John F. Callan has not paid to this respondent, or to either of the heirs of William Robinson, deceased, nor to any other person interested in or authorized to receive the consideration of the purchase of the lot of ground named in said bill of complaint, to wit, lot 8, in sq. 456, in Washington city, but that, on the contrary, the same being three thousand dollars, is still due and entirely unpaid. That the said Callan also owes the rent or interest thereon from the first day of July, 1856.

That this respondent knows nothing of any judgments against said John F. Callan, nor of the conveyances of any of his property, nor of this property, nor of any combinations or intents or acts of fraud by him or any others concerning the premises, as alleged in the bill of complaint.

But this respondent avers and charges that all of the said three thousand dollars are due and unpaid, with the rent or interest thereon, from the 1st July, 1856, and that no order or decree of this court can be justly made to affect or in any way interfere with the rights of this respondent as executor, child, heir, and devisee of said Mrs. Alice C. Jennings, deceased, or as trustee for said *Alice* H. Brooks, and her heirs and assigns, or to affect any other of the children, heirs, or devisees of said Alice C. Jennings, deceased, without first proceeding for the payment of said $3,000, with interest, out of the property aforesaid.

And this respondent claims and contends, that as executor of the last will and testament of Mrs. Alice C. Jennings, dec'd, he is entitled to have and receive all the aforesaid sum of $3,000, the purchase money for said lot, together with all the interest thereon, from the 1st July, 1856, so that he may make distribution thereof, according to her devises therein expressed; and he prays that in whatever may be done or ordered by the court in the premises he may be protected as to the said sum, with interest.

And this respondent further prays that such other protection and relief may be granted to him by the court as may seem just and proper in this matter and behalf, and that he may be saved from all his costs and expenses by reason of said bill of complaint.

HENRY M. MORFIT,
Solicitor for Respondent.

And said cause was regularly continued until the 16th January, one thousand eight hundred and fifty-seven, when the answers of William Robinson, Benjamin N. Robinson, and Alice Octavia Robinson, were filed in the words following, to wit:

The joint and several answer of William Robinson, Alice Octavia Robinson, his wife, and Benjamin N. Robinson, to the bill of complaint of Austin Sherman vs. John F. Callan and others.

In Chancery in the Circuit Court of the District of Columbia.

These respondents reserving to themselves all manner of objection to the insufficiencies of said bill of complaint, for answer to so much thereof as they are advised it is necessary for them to answer, now answer and say, that they know nothing of the judgments against said John F. Callan, as averred in the bill.

That it is true, as stated, that the lot of ground numbered eight, in square four hundred and fifty-six, in Washington city, was conveyed to their father, William Robinson, now deceased, in trust for said Alice C. Jennings and her heirs; and that the said William Robinson leased the sum to said Callan, with a contract on his part to purchase the fee simple therein, after the death of said Alice, for three thousand dollars, to be paid to the said William Robinson, his heirs or assigns; and that upon such payment, according to the terms of said lease and contract, the said William Robinson would convey said land and premises to said Callan in fee.

That said Alice died in , 1851, leaving a will, by which she devised this property, under a general designation with other property not specifically devised to others, to her daughters, Robinsonova Clarke, Alice Octavia Robinson, Amanda C. Jennings, and Indiana H. Jennings, to be divided among them share and share alike, and appointed Wm. Robinson, (her said trustee,) and her son, Needler R. Jennings, executors. That the former, to wit, her said trustee William Robinson, died before the testatrix, and the latter, Needler R. Jennings, qualified as executor. That Indiana H. Jennings, in 1851, intermarried with one John Brooks, and shortly after died, leaving her husband and James Jennings Brooks, (not John, as stated in the bill,) an infant child, surviving her. That before said intermarriage, a marriage settlement, as these respondents believe, was made, as stated in the bill, between said Indiana and said husband, John Brooks. That they also believe that Needler R. Jennings was made the trustee in that settlement, and that he claims the portion of the estate in that capacity, which he desires to preserve as the share of Indiana H. Jennings, late Brooks, and now deceased, for her infant child, James Jennings Brooks, and which claims these respondents suppose to be right.

That said William Robinson (trustee in said deed or covenant with Callan) departed this life in the year 1850, leaving two of these respondents, to wit, said William Robinson and Benjamin N. Robinson, his only children and heirs.

That these respondents know nothing about any tender of the

property, was conveyed to this respondent, in trust for her and her assigns, and to be held for her and them, free and clear of her said husband and of his control, and of his debts, &c.

That said John F. Callan has not paid to this respondent, or to either of the heirs of William Robinson, deceased, nor to any other person interested in or authorized to receive the consideration of the purchase of the lot of ground named in said bill of complaint, to wit, lot 8, in sq. 456, in Washington city, but that, on the contrary, the same being three thousand dollars, is still due and entirely unpaid. That the said Callan also owes the rent or interest thereon from the first day of July, 1856.

That this respondent knows nothing of any judgments against said John F. Callan, nor of the conveyances of any of his property, nor of this property, nor of any combinations or intents or acts of fraud by him or any others concerning the premises, as alleged in the bill of complaint.

But this respondent avers and charges that all of the said three thousand dollars are due and unpaid, with the rent or interest thereon, from the 1st July, 1856, and that no order or decree of this court can be justly made to affect or in any way interfere with the rights of this respondent as executor, child, heir, and devisee of said Mrs. Alice C. Jennings, deceased, or as trustee for said *Alice* H. Brooks, and her heirs and assigns, or to affect any other of the children, heirs, or devisees of said Alice C. Jennings, deceased, without first proceeding for the payment of said $3,000, with interest, out of the property aforesaid.

And this respondent claims and contends, that as executor of the last will and testament of Mrs. Alice C. Jennings, dec'd, he is entitled to have and receive all the aforesaid sum of $3,000, the purchase money for said lot, together with all the interest thereon, from the 1st July, 1856, so that he may make distribution thereof, according to her devises therein expressed; and he prays that in whatever may be done or ordered by the court in the premises he may be protected as to the said sum, with interest.

And this respondent further prays that such other protection and relief may be granted to him by the court as may seem just and proper in this matter and behalf, and that he may be saved from all his costs and expenses by reason of said bill of complaint.

HENRY M. MORFIT,
Solicitor for Respondent.

And said cause was regularly continued until the 16th January, one thousand eight hundred and fifty-seven, when the answers of William Robinson, Benjamin N. Robinson, and Alice Octavia Robinson, were filed in the words following, to wit:

The joint and several answer of William Robinson, Alice Octavia Robinson, his wife, and Benjamin N. Robinson, to the bill of complaint of Austin Sherman vs. John F. Callan and others.

In Chancery in the Circuit Court of the District of Columbia.

These respondents reserving to themselves all manner of objection to the insufficiencies of said bill of complaint, for answer to so much thereof as they are advised it is necessary for them to answer, now answer and say, that they know nothing of the judgments against said John F. Callan, as averred in the bill.

That it is true, as stated, that the lot of ground numbered eight, in square four hundred and fifty-six, in Washington city, was conveyed to their father, William Robinson, now deceased, in trust for said Alice C. Jennings and her heirs; and that the said William Robinson leased the sum to said Callan, with a contract on his part to purchase the fee simple therein, after the death of said Alice, for three thousand dollars, to be paid to the said William Robinson, his heirs or assigns; and that upon such payment, according to the terms of said lease and contract, the said William Robinson would convey said land and premises to said Callan in fee.

That said Alice died in , 1851, leaving a will, by which she devised this property, under a general designation with other property not specifically devised to others, to her daughters, Robinsonova Clarke, Alice Octavia Robinson, Amanda C. Jennings, and Indiana H. Jennings, to be divided among them share and share alike, and appointed Wm. Robinson, (her said trustee,) and her son, Needler R. Jennings, executors. That the former, to wit, her said trustee William Robinson, died before the testatrix, and the latter, Needler R. Jennings, qualified as executor. That Indiana H. Jennings, in 1851, intermarried with one John Brooks, and shortly after died, leaving her husband and James Jennings Brooks, (not John, as stated in the bill,) an infant child, surviving her. That before said intermarriage, a marriage settlement, as these respondents believe, was made, as stated in the bill, between said Indiana and said husband, John Brooks. That they also believe that Needler R. Jennings was made the trustee in that settlement, and that he claims the portion of the estate in that capacity, which he desires to preserve as the share of Indiana H. Jennings, late Brooks, and now deceased, for her infant child, James Jennings Brooks, and which claims these respondents suppose to be right.

That said William Robinson (trustee in said deed or covenant with Callan) departed this life in the year 1850, leaving two of these respondents, to wit, said William Robinson and Benjamin N. Robinson, his only children and heirs.

That these respondents know nothing about any tender of the

$3,000 by said John F. Callan direct to them, as none such was ever made, though they admit that they heard that said Callan had offered to pay said money when a deed conveying said property to him should be executed to him by said two respondents, William and Benjamin N. Robinson, as only heirs of said William Robinson, deceased, but that said two respondents, not knowing anything of their obligations in the premises, took no notice of what they had heard concerning said offer.

That the said three thousand dollars has not, nor has any part of it, been paid to the said William and Benjamin N. Robinson, nor either of them, nor to the said other respondent, Alice Octavia Robinson, the wife of said William, nor to any other person or persons authorized on their behalf, or in behalf of either of them, to receive it.

That these respondents have understood and believe that the rent or interest on the said $3,000 has been paid to Needler R. Jennings, as executor of Mrs. Alice C. Jennings, dec'd, by said J. F. Callan, up to the 1st July, 1856, and they aver and answer and say that the whole of said $3,000 remains now unpaid by said Callan, and they believe the interest thereon is still running and unpaid in any part from the said 1st July, 1856.

They further answer and say, that from the published order against non-resident defendants in this cause, it does not appear that James R. Jennings, who is a resident of Hawesville, in the State of Kentucky, has been made a party defendant to this complaint, and they aver that the said James R. Jennings is one of the legal heirs and children of said Alice C. Jennings, and ought to be made a party in the cause before the hearing thereof or any order or decree is made therein.

And the said defendants further answer and say, that they know nothing of any conveyances by said John F. Callan, as charged in said bill of complaint, to Mary Ann Nalley or Nicholas Callan, or any other person, nor of any of the other matters concerning the same.

And they also further answer and say, that they, the said two respondents, William and Benjamin N. Robinson, are willing, as the only heirs of William Robinson, dec'd, (said trustee,) to execute and deliver a conveyance of said lot 8, in sq. 456, in Washington city, to said John F. Callan, or whomsoever else the court here in this cause may decree as entitled to the same, at the costs of said J. F. Callan or party to whom such conveyance is to be made: provided the said Callan or said party shall first pay to Needler R. Jennings, as executor under the last will and testament of Alice C. Jennings, deceased, the said sum of $3,000 with interest thereon from the 1st day of July, 1856, to the time of payment of said principal, and which money they will look to the said Needler R. Jennings, executor aforesaid, to distribute among the

devisees under the will of said Alice, according to the terms thereof.

And the said Alice Octavia Jennings, the other respondent to said bill of complaint, joins herein in all the answers and statements now and just made.

And all of said respondents pray, that no order or decree be made in this cause in any way to impair the rights and interests of said respondents, or any of the children of said Alice C. Jennings, or of the infant James J. Brooks, represented by Needler R. Jennings under said marriage settlement, to disturb the claim, right and title of said William Robinson and Benjamin N. Robinson in said property, until and unless the said sum of three thousand dollars, with all arrears of interest until the time when the principal may be paid, shall first be paid in full to said Needler R. Jennings, executor of said Alice C. Jennings, who is hereby authorized to receive it.

And these respondents further pray, that such proceedings and decrees may be passed by this court as will protect them in the premises; and also that all other relief may be given them herein that may be consistent with justice and equity.

WM. ROBINSON,
A. O. ROBINSON,
BEN. N. ROBINSON.

KING AND QUEEN COUNTY,
State of Virginia, to wit.

On this the 2d day of January, in the year eighteen hundred and fifty-seven, before the subscriber, a justice of the peace in and for the county of King and Queen, in the State aforesaid, personally appeared William Robinson and Ben. N. Robinson, parties to the foregoing answer in chancery, and he being duly sworn upon the Holy Evangely of Almighty God, makes oath and says that the matters set forth in the foregoing answer, upon their own knowledge, are true as therein stated, and those alleged upon information derived from others they believe to be true.

ROD. BLAND, *J. P.* [SEAL.]

STATE OF VIRGINIA,
County of King and Queen, to wit.

I, Robert Pollard, jr., clerk of the county court of King and Queen, do certify that Roderick Bland, esquire, whose name is signed to the within certificate, was at the time of signing the same, and now is, a justice of the peace in and for the county aforesaid, duly qualified according to law, and that his signature aforesaid is genuine.

Given under my hand and seal of office, this 5th day of January, one thousand eight hundred and fifty-seven.

ROBERT POLLARD, JR., [SEAL.]
Clerk.

Tax on seal	$1 50
Clerk's fee	37
	$1 87

And afterwards, to wit, on the fourteenth day of February, a commission issued to take the answers of the infants defendants, Callan. (Copied post, page 213 et seq.)

And said cause was regularly continued until the fourth day of May, one thousand eight hundred and fifty-seven, when the answers of John F. Callan, Nicholas Callan and Michael A. Guista, by their solicitors aforesaid, filed in court here in the words following, to wit:

To the honorable the Judges of the Circuit Court of the county of Washington, in the District of Columbia, sitting in chancery:

The answer of John F. Callan to the bill of complaint of Austin Sherman against him and others, in this court exhibited.

1. To interrogatory 1st this respondent answers: That it may be true that the said complainant did recover the several judgments recited in the said bill, but he knows nothing of any issues or returns.

2. To interrogatory 2d this respondent answers: That the whole of the sum of $4,900 alluded to was paid by Michael P. Callan to this respondent before the 16th October, 1854, by a surrender of this respondent's promissory note of $4,000 and $900 in cash; the payment was not made in the presence of any other person or persons.

3. To interrogatory 3d this respondent answers: That the said John F. Callan is now in the occupancy of the whole of lot 8 in square 456, and improvements. He has so occupied it for 16 years, or more. He was the tenant of Mrs. Jennings and of her heirs up to the 16th Oct., 1854, when he disposed of his interest in the property to Michael P. Callan, and he has been said Michael P. Callan's tenant since that time, and on account of the rent of the premises this respondent has paid taxes, repairs and interest, (to the Jennings estate,) amounting to about $760.

4. To interrogatory 4th this respondent answers: That he has collected rents from the portions of said lot and improvements occupied by A. Chapman, J. Bigelow, A. Gregory, Wm. M. Smith, and A. Adamson; the amount so collected since Oct. 16, 1854, is about $1,560, which amount he has not paid over to said Michael P. Callan, or according to his orders or directions, nor has Michael P. Callan demanded his rent, nor does this respondent know what accounts said Michael P. Callan keeps of his rents.

5. To interrogatory 5th this respondent answers: That he has paid the taxes on lot 8 in square 456 for the years 1854 and 1855; he has also paid the repairs on the property since Oct., 1854,

which, together, amount to about $400, and $360 to Jennings's heirs, (as interest on $3,000 due them,) in all $760; which sum is a charge against the rent to be paid to Michael P. Callan for said lot 8 in square 456. The taxes for 1856 are not paid, and there is arrears of interest yet due to Jennings's estate.

6. To interrogatory 6th your respondent answers: That no part of the $3,000 was tendered to the heirs-at-law of the said William Robinson, or to any other person or persons. After the death of Alice C. Jennings, this respondent applied to the said heirs for a deed of lot 8 in square 456, according to contract, when he was informed that some of the heirs were unwilling to make the deed, charging that this respondent was not entitled thereto, and stating that they were advised to refuse to make the deed, and that the lot with its improvements had reverted to them; nor was it until within a few weeks that this respondent has learned that there was any prospect of an agreement among the said heirs to carry out the contract in good faith, and to make him a deed upon the payment of the $3,000 and interest.

7. To interrogatory 7 this respondent answers: That the rents, dues and taxes under said lease, and the covenants and stipulations thereof, were performed by this respondent without default, as he believes, during the lifetime of Alice C. Jennings.

8. To interrogatory 8 this respondent answers: That lot 8, in square 456, with the improvements and appurtenances at the time mentioned in the interrogatory, was not worth upwards of $15,000, nor was the value of the same and of the interest conveyed to Michael P. Callan more than that for which this respondent conveyed them, the improvements being mostly of a very temporary character, and the uncertainty of procuring a title for the lot rendering this respondent's interest therein wholly unsaleable; and situated as the property was, it was difficult for this respondent to find a purchaser at all, willing to incur the risk of a purchase involving the issue of a long and uncertain lawsuit. This respondent had no interest in any other lots and premises, as he believes, in the city of Washington, at the time of executing the deed to Michael P. Callan, but he was informed that several deeds for property in the city of Washington, which he had given, were considered defective, and he introduced into the deed to Michael P. Callan the words "any other property," so as to present a reversion to this respondent of any property so defectively conveyed, that said M. P. Callan might make them good titles. See answer in chancery, case 1,165.

9. To interrogatory 9 your respondent answers: That he was indebted to Mary Ann Nalley, in October, 1852, in the sum of $4,700. This respondent's deed to her was in fee, in consideration of said indebtedness. Subsequently numerous complaints reached this respondent, that Mary Ann Nalley was dissatisfied with this

purchase, and wished him to take it back and pay her what she gave for it, which this respondent was never able to do, and this subject was a constant source of wrangling among the two families, Mary Ann Nalley and this respondent being relatives by consanguinity and marriage. In September, 1855, this repondent, anxious to put an end to *this* family difficulties, proposed to Mary Ann Nalley to consider the deed of 13 Sept'r, 1852, as a security for $4,700, and to procure her the money instead of the property, which this respondent also understood to be her desire; but Mary Ann Nalley refuses so to consider the said deed, or to dispose of the property, except at a consider*ation* advance upon the price she gave for it; and the negotiation there ended until in December, 1855, when this respondent negotiated with Mary Ann Nalley for the sale of the said property to Nicholas Callan, he already having an interest therein, for the sum of $5,000; and Mary Ann Nalley, upon receiving that sum of money from the said Nicholas Callan, conveyed to him the said property in fee, by deed dated 13 Dec'r, 1855.

10. To interrogatory 10 this respondent answers: The sum of $5,000 was paid to Mary Ann Nalley by Nicholas Callan, to whom Mary Ann Nalley executed a deed in fee, dated 13th Dec'r, 1855, for the property therein described. The deed was made at Mary Ann Nalley's instance, and was in her possession for several days (for examination and consultation of her attorney or friends) before she executed it, which she did do on the day named above, at her own house, in the presence of the justices of the peace who witnessed her signature. The consideration of said deed was $5,000, and the deed when executed was delivered to George McNeir, esq., for Nicholas Callan.

11. To interrogatory 11th this respondent answers: The deed alluded to, he is informed, is not now in the *possion* of said Nicholas Callan, but is filed for record in the proper office. The omission to record it before 1st August, 1856, this respondent is informed is altogether accidental.

12. To interrogatory 12th this respondent answers: That no part of the $2,200 named in the deed of trust to Nicholas Callan, to secure the promissory note in favor of Michael A. Guista, has been paid by this respondent; $1,000 of that amount was paid (as he is informed) by Nicholas Callan, in 1852 or '3, to prevent a sale of the property, as was then ordered, by said Michael A. Guista. Said Nicholas Callan (as this respondent is informed) has also paid the interest thereupon for about 4 years, but how much interest has been so paid and how much is now due, this respondent does not know. The whole $2,200 and interest is due by this respondent, viz: $1,200 to Michael A. Guista and $1,000 to Nicholas Callan.

JOHN F. CALLAN.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this 14th day of November, 1856, before the subscriber, a justice of the peace in and for the county aforesaid, personally appeared John F. Callan, and made oath upon the Holy Evangely of Almighty God that the matters stated in the foregoing answer as being within his knowledge are true, and that those which are stated to be not within his knowledge he believes to be true.

JOSHUA PEIRCE, *J. P.*

The answer of Nicholas Callan to the bill of complaint of Austin Sherman against him and others in said court exhibited, in which bill this respondent is required to answer interrogatories numbered respectively 9, 10, 11, and 12.

9. To interrogatory 9 he answers: That he knows nothing of the dealings between Mary Ann Nalley and the said John F. Callan, though he understood the said John F. Callan was indebted to her in the sum of $4,700 in 1852, to satisfy which the said John F. Callan conveyed her the property named in the deed of 13th October, 1852. He was also informed that in consequence of Mary Ann Nalley's frequent complaints, that the property so conveyed to her was not an equivalent for the amount for which said John F. Callan had conveyed it, said John F. Callan proposed to consider the conveyance as a security for said amount, and to procure a redemption thereof upon the payment of said debt; but, as this respondent understood, Mary Ann Nalley then refused, unless for a bonus much beyond the value of the property, such proposition. John F. Callan never did redeem the property, but this respondent purchased it from Mary Ann Nalley for the sum of $5,000, which he paid her in cash, and the property now belongs to this respondent.

10. To interrogatory 10 he answers: That the sum of $5,000 was paid to Mary Ann Nalley, in consideration of which she executed to this respondent a deed in fee for said property, which deed was made at the instance of this respondent, and the payment of the said $5,000 was made to Mary Ann Nalley at the execution of the said deed at her own house in the presence of George McNeir and David Saunders, esqs., neither this respondent being present at the acknowledgment of said deed or the payment of the money. The deed, when executed, was delivered to George McNeir, esq., for this respondent; the consideration of said deed was $5,000. The money so paid was not John F. Callan's, as alleged, but belonged to this respondent.

11. To interrogatory 11 he answers: That the said deed is not now in this respondent's possession, but it is of record in the office of the clerk of the circuit court of the county of Washington, in this District, where it was deposited by this respondent on 1st Au-

gust, 1856. The omission to record the same at an earlier date was purely accidental on the part of this respondent.

12. To interrogatory 12 he answers: That the whole of the debt, $2,200, and about 4 years' interest thereupon, is due by John F. Callan, as recited in the deed of trust, viz., $1,200 to Mich'l A. Guista, and $1,000 to this respondent, this respondent having paid $1,000 to the said Michael A. Guista in 1852 or '3 upon the demand of said Michael A. Guista to prevent a sale of the property under said deed of trust. It was the having this interest in the trust deed, and the fact that Mary Ann Nalley paid no part of the interest thereupon for the two years she owned the property, that he was induced to purchase the property from Mary Ann Nalley as he did.

N. CALLAN.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this 28th day of November, 1856, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally appeared Nicholas Callan, and made oath upon the Holy Evangely of Almighty God that the matters stated in the foregoing answer as being within the respondent's knowledge are true, and that those which are not stated to be within his knowledge he believes to be true.

F. S. MYER, *J. Peace.* [SEAL.]

The answer of Michael A. Guista to the complaint of Austin Sherman against John F. Callan, Michael A. Guista, and others, in this court exhibited.

This respondent, being required to answer the interrogatory numbered 12, states, that the balance due on the mortgage to this respondent by John F. Callan on the west half of lot 7, in square 456, is $1,200. The amount was originally $2,200, but Nicholas Callan paid this respondent $1,000 of that amount in 1852 or '3; and the said Nicholas Callan has also paid me all the instalments of interest upon the said mortgage since it has been in existence, except perhaps the first instalment of interest.

MICHAEL A. GUISTA.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this 2d day of January, in the year of our Lord 1857, before me, the subscriber, a justice of the peace in and for the said county, personally appeared Michael A. Guista, and made oath upon the Holy Evangely of Almighty God that the foregoing answer is true to the best of his knowledge and belief.

F. S. MYER, *J. P.*

And afterwards, to wit, on the first day of June, the complainant, by his solicitor, filed in court here the following exceptions:

AUSTIN SHERMAN vs. JOHN F. CALLAN et al. } 1,192.—Chancery.

To the Honorable the Judges of the Circuit Court of the District of Columbia, sitting in chancery:

The complainant prays leave to except to the answer filed by the defendant, John F. Callan—

1. For that the said defendant, John F. Callan, hath not answered according to the best and utmost of his knowledge, remembrance, information, and belief, whether he has any property liable for the judgments mentioned in the said bill under legal process.

2. For that the said defendant hath not in any manner aforesaid answered and set forth, whether the conveyance from the said defendant to Michael P. Callan mentioned in said bill was designed to hinder and defraud the said complainant in the collection and recovery of his just debts.

3. For that the said defendant hath not in any manner answered and set forth whether at the time of the execution of said conveyance the said defendant was indebted largely and beyond his means of making payment; whether he represented himself to be insolvent, and whether the said Michael P. Callan knew the same.

4. For that the said defendant hath not in any manner aforesaid answered and set forth whether the said defendant advanced the said sum of five thousand dollars mentioned in said bill as having been paid to Mary Ann Nalley; whether the conveyance from the said Mary Ann Nalley to Nicholas Callan, mentioned in the bill, was in trust for the wife and children of the said defendant; whether his said wife had any interest in the said sum of five thousand dollars; and whether the said conveyance was voluntary and without any valuable consideration, and intended to hinder, delay and defraud the creditors of the said defendant in the collection of their just debts.

5. For that the said answer is in other particulars insufficient and evasive.

SAMUEL CHILTON,
DAVIDGE & INGLE,
For Compl't.

AUSTIN SHERMAN vs. JOHN F. CALLAN et al. } 1,192.—Chancery.

To the Honorable the Judges of the Circuit Court of the District of Columbia, sitting in chancery:

The complainant prays leave to except to the answer filed by the defendant, Nicholas Callan—

1. For that the said defendant, Nicholas Callan, hath not answered and set forth according to the best and utmost of his knowledge, remembrance, information and belief, whether the conveyance from Mary Ann Nalley to the said Nicholas Callan mentioned in said bill was in trust for the wife and children of the said John F. Callan, or either or any of them.

2. For that the said defendant hath not in any manner aforesaid answered and set forth whether the said conveyance was made at the instance of the said John F. Callan; whether the said John F. Callan advanced the said sum of five thousand dollars mentioned in said bill as having been paid to the said Mary Ann Nalley, and whether the said conveyance was voluntary and without any valuable consideration, and intended to hinder, delay and defraud the creditors of said John F. Callan in the collection of their just debts.

3. For that the said answer is in other particulars impertinent, insufficient, and evasive.

SAMUEL CHILTON,
DAVIDGE & INGLE,
For Compl't.

And afterwards, to wit, on the twenty-fifth day of June, a commission issued to take the answer of the infant defendant, James Jennings Brooks, (copied post, page 216.)

And afterwards, to wit, on the sixth day of July, one thousand eight hundred and fifty-seven, the defendants, John F. Callan and Nicholas Callan, by their solicitors aforesaid, and by leave of the court, here filed the following amended answers:

Amended answer of Jno. F. Callan to the bill of Complaint of Austin Sherman against him and others.

This respondent states, without admitting the insufficiency of his original answer, that said answer was prepared by himself under the belief that he was only required to answer to such matters as were set forth in the interrogatories exhibited with said bill, all which he submits have been fully answered by him, and with no intent or desire to evade any material allegation in said bill.

And further answering, in so far as advised that it is material for him to answer, respondent says, that it is true, as stated in said bill, that respondent has no property liable for the judgments mentioned in said bill under legal process.

And respondent utterly denies that the deed from him to Michael P. Callan mentioned in said bill was designed to delay, hinder, and defraud the complainant in the collection and recovery of his just debts, but, on the contrary thereof, avers that the same was in pursuance of a bona fide contract of sale for the consideration

mentioned in respondent's original answer, which he deemed adequate in view of the uncertainty and precariousness of his title. Respondent admits that at the date of said conveyance he was largely indebted by reason of his responsibilities assumed for other persons, and beyond his means of payment, and that Michael P. Callan was acquainted with his pecuniary embarrassments, but he has no recollection of having made any representations as to his insolvency.

And respondent utterly denies that he advanced the sum of five thousand dollars, mentioned in said bill as having been paid to Mary Ann Nalley. He, in like manner, denies that the conveyance from Mary Ann Nalley to Nicholas Callan, mentioned in said bill, was in trust for the wife and children of respondent, and that his said wife had any interest whatever of said sum of five thousand dollars, and that said conveyance was voluntary and without valuable consideration, or intended to hinder, delay, and defraud the creditors of said defendant in the collection of their just debts.

Respondent shows, on the contrary, that the sum of five thousand dollars was borrowed from the Bank of Washington by the said Nicholas Callan, upon his note, at thirty days, endorsed by Samuel A. Peugh, which said note is still due to said bank, the said Nicholas Callan having been prevented by the pendency of this suit from disposing of said property and paying off said note out of the proceeds thereof, as he had calculated to do, all which respondent is prepared to prove when required.

And he prays to be hence dismissed, with his reasonable costs, &c., without this, &c.

BRENT & COX, *Sol'rs.*

DISTRICT OF COLUMBIA,
County of Washington, sct.

On this sixth day of July, A. D. 1857, before the subscriber, a justice of the peace in and for the county aforesaid, in the District aforesaid, personally appears John F. Callan, and makes oath on the Holy Evangely, &c., that the matters stated in the aforegoing answer as within his own knowledge are true; and that those stated as not of his own knowledge, he believes to be true.

THO'S DONOHO, *J. P.*

Amended answer of Nicholas Callan to the bill of complaint of Austin Sherman against him and others.

This respondent, not admitting his original answer to said bill to be insufficient, nevertheless, now further answering, in so far as advised that answer from him is material, says that the conveyance to respondent from Mary Ann Nalley, mentioned in said bill, was not in trust for the wife and children of John F. Callan, or either or any of them; that said deed was not made at the instance

of said John F. Callan, except as agent in negotiating the sale of said property to respondent; that said John F. Callan did not advance the sum of five thousand dollars mentioned in said bill as having been paid to said Mary Ann Nalley, or any part thereof, and said conveyance was not voluntary or without valuable consideration, and was not intended to hinder, delay, and defraud the creditors of said John F. Callan, in the collection of their just debts.

Respondent avers that the said sum of five thousand dollars was borrowed by him for his own use from the Bank of Washington, upon his note, at thirty days, endorsed by Sam'l A. Peugh, and said money was applied by him in the purchase of the property referred to in the deed from Mary Ann Nalley, for his own exclusive use, neither said John F. Callan nor his family having any interest therein; that respondent expected to sell said property at an advance, and out of the property to pay said note, but has been prevented from making said sale by the pendency of this suit, and his note aforesaid to the Bank of Washington still remaining unpaid.

Respondent prays to be hence dismissed, with his reasonable costs, &c., without this, &c.

N. CALLAN.

BRENT & COX, *Sol'rs.*

DISTRICT OF COL'A,
County of Wash'n, sct.

On this sixth day of July, 1857, before the subscriber, a justice of the peace in and for the county aforesaid, personally appeared Nicholas Callan, and made oath on the Holy Evangely, &c., that the matters stated in the aforegoing answer as of his own knowledge are true, and that those not stated as of his own knowledge he believes to be true.

R'D BURGESS, *J. P.*

And afterwards, to wit, on the sixth day of August, one thousand eight hundred and fifty-seven, the following commissions, with the answers of the infants defendants, were filed.

Circuit Court of the District of Columbia, sitting as court of equity for Washington county.

The United States of America to John C. C. Hamilton, esq., greeting:

Whereas Austin Sherman has lately exhibited his bill of complaint before us, in our court above mentioned, against John F. Callan and others, defendants; and whoreas we have by our writ lately commanded the said defendants to appear before us, in our said court, at a certain day, to answer the said bill, but forasmuch as James Nicholas Callan, John Callan, Charles Constantine Cal-

lan, Rosalia Callan, Laura Callan, Clara Callan, and Hellen Callan, are infants under age, and cannot answer the said bill nor defend this suit without having a guardian assigned in that behalf, know ye, therefore, that we have given unto you full power and authority, in pursuance of the special order in our said court to assign and appoint a guardian for the aforesaid infants, and to take the answer of the said infants by such guardian to the said bill; and therefore we command you that, at such certain day and place as you shall think fit, you go to the said infant defendants, if they cannot conveniently come to you, and assign and appoint a guardian for the aforesaid infants, and take the answer of the said infants by such guardian to the said bill, on such guardian's corporal oath, upon the Holy Evangely, to be administered by you, the said answer being plainly and distinctly written; and when you shall have so taken the said answer, you are to send the same, closed up under your seal, together with your certificate of your having assigned and appointed such guardian as aforesaid, and this writ, unto us in our said court.

Witness the Hon. James Dunlop, chief judge of our said court, at the city of Washington, this 12th day of January, 1857. Issued this fourteenth day of February, 1857.

JNO. A. SMITH, *Cl'k.*

To the Hon'ble the Judges of the Circuit Court, &c., &c.

The subscriber, being the commissioner named in the annexed commission, hereby certifies, that in execution of the powers vested in him, he went to the residence of said infants named in said commission, in Washington city, D. C., and caused said infants to be brought before him, and then and there in presence of said infants, assigned and appointed Oliver Phelps, jr., guardian to said infants, and took the answer of said infants by their said guardian, and under oath of said guardian, by him administered, to the bill of complaint in said commission mentioned, which said answer with said commission is herewith returned under his hand and seal, this sixth day of August, A. D. 1857.

JNO. C. C. HAMILTON, [SEAL.]
Commissioner.

To the Hon'ble the Judges of the Circuit Court, &c., &c.

The answer of James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan and Hellen Callan, to the bill of complaint of Austin Sherman against them in chancery exhibited.

These defendants, each for himself and herself, by their guardian, answering say, that they are infants under the age of twenty-one years, and cannot admit any of the matters and things alleged

in said bill, but submit their rights and interests to the protection of the court.

OLIVER PHELPS, JR., [SEAL.]
Guardian.

On this sixth day of August, A. D. 1857, the above named Oliver Phelps, jr., appeared before me, commissioner, and made oath that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

JNO. C. C. HAMILTON, [SEAL.]
Commissioner.

Circuit Court of the District Columbia, sitting as court of equity for Washington county.

The United States of America to George E. Otis*, Nelson Tyler and William M. Chandler, greeting:

Whereas Austin Sherman has lately exhibited his bill of complaint before us, in our court above mentioned, against John F. Callan and others, defendants; and whereas we have by our writ lately commanded the said defendants to appear before us, in our said court, at a certain day, to answer the said bill, nor defend this suit without having a guardian assigned in that behalf: Know ye, therefore, that we have given unto you full power and authority, in pursuance of the special order in our said court, to assign and appoint a guardian for the aforesaid infant, and to take the answer of the said infant, by such guardian, to the said bill; and therefore we command you, that such certain day and place as you shall think fit, you go to the said infant defendant, if he cannot conveniently come to you, and assign and appoint a guardian for the aforesaid infant, and take the answer of the said infant by such guardian to the said bill, on such guardian's corporal oath, upon the Holy Evangely, to be administered by you, the said answer being plainly and distinctly written; and when you shall have so taken the said answer, you are to send the same, closed up under your seal, together with your certificate of your having assigned and appointed such guardian as aforesaid, and this writ, unto us in our said court.

Witness the Hon. James Dunlop, chief judge of our said court, at the city of Washington, the 30th day of May, 1857.

Issued this 25th day of June, 1857.

[SEAL.]

JNO. A. SMITH, *Cl'k.*

*Referring to George A. Otis, jun'r, medical practitioner in Springfield.

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the county of Washington, sitting in chancery:

The subscribers, being the commissioners named in the annexed

commission, hereby certify, that in execution of the powers thereby vested in them, they did on the first day of July, 1857, proceed to the dwelling-house in Springfield, Massachusetts, where James Jennings Brooks, the infant named in the said commission, then was, and caused the said infant to be brought before them, and then and there in the presence of the said infant assigned and appointed Jane B. Tyler, of said Springfield, guardian of said infant, and took the answer of said infant by his said guardian, and under the oath of the said guardian by them administered to the bill of complaint in said commission mentioned, which said answer with said commission is herewith returned, closed under the hands and seals of them, the said commissioners, this first day of July, 1857.

GEORGE A. OTIS, JR., [SEAL.]
NELSON TYLER, [SEAL.]
WILLIAM M. CHANDLER. [SEAL.]

The answer of James Jennings Brooks, an infant under the age of twenty-one years, by Jane B. Tyler, his guardian, to the bill of complaint of Austin Sherman, against him and others, in chancery exhibited.

This defendant cannot admit any of the matters and things alleged in the said bill, and being an infant of tender years, submits his rights to the protection of this court.

JANE B. TYLER. [SEAL.]

On the first day of July, 1857, the above named Jane B. Tyler appeared before us, the commissioners above mentioned, and made oath, that the matters and things stated in the foregoing answer are true to the best of knowledge and belief.

GEORGE A. OTIS, JR., [SEAL.]
NELSON TYLER, [SEAL.]
WILLIAM M. CHANDLER. [SEAL.]

Thereupon it was agreed between the solicitors aforesaid, that a commission issue to Richard H. Clarke, esquire, to take testimony in the cause, which issued accordingly in the words and figures following, to wit:

DISTRICT OF COLUMBIA, *to wit.*

The United States of America to Richard H. Clarke, esquire, greeting:

Know ye, that you are appointed commissioner to examine evidences in a cause depending in the circuit court for the county of Washington, in the District of Columbia, between Austin Sherman, complainant, and John F. Callan, Sarah A. Callan, Michael P. Callan, Nicholas Callan, Mary E. Callan, Margaret A. Callan and others, defendants.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the complainant or defendants, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid, and that you cause notice to be given to the parties or their attorneys, of the execution of this commission, before you execute the same, and having reduced the depositions of the witnesses, so taken by you, into writing, you send the same with this commission, closed under your hand and seal, to the judges of the said circuit court, with all convenient speed.

Witness the Honorable James Dunlop, chief judge of the said court, the 30th day of May, in the year of our Lord 1857.

Issued the sixth day of August, 1857.

JNO. A. SMITH, *Cl'k.*

And afterwards, to wit, on the second day of September, one thousand eight hundred and fifty-seven, the defendant Michael P. Callan, by his solicitor, filed in court here his answer to the bill aforesaid, in the words following, to wit:

Answer of Michael P. Callan to the Bill of Complaint of Austin Sherman, against him and others.

This respondent, saving all right of exception to said bill for its manifold errors, &c., nevertheless, now answering the same, for answer says: He knows nothing of the judgments set forth in said bill against John F. Callan. He admits the execution of the deeds mentioned in said bill from Henry M. Morfit to William Robinson, and from William Robinson and Alice C. Jennings to John F. Callan, and from said John F. Callan to this respondent; and that said John F. Callan was, at the date of said deed to him, in possession of the property described in said deed as tenant of said Robinson, trustee for said Alice C. Jennings, and has continued in possession to the present time, but since October 16, 1854, as tenant of this respondent.

But further answering, respondent denies that said John F. Callan ever tendered the sum of three thousand dollars mentioned in said indenture, according to the terms of said indenture, or in any respect complied with and performed the conditions and stipulations thereof, in regard to the purchase of the property therein described. Respondent has learned that said John F. Callan did advise some one of the heirs of Mrs. Jennings of his willingness to pay said sum of three thousand dollars, upon receiving a proper

deed, but this was more than sixty days after the death of said Alice C. Jennings, and after the expiration of the time within which said payment was to be made; and respondent is informed that the heirs of Mrs. Jennings refused to execute a deed, denying the right of their mother to execute the indenture aforesaid to the said John F. Callan, and the contract therein contained, and even claiming the improvements which the said John F. Callan had erected upon the property.

Respondent further shows, that said refusal continued at the date when he purchased said property from said John F. Callan, and received a deed therefor on the 16th October, 1854; that said sum of three thousand dollars was then unpaid, and has so remained to the present time.

Respondent utterly denies that at the date of said deed from John F. Callan, the property therein conveyed, viz: lot 8, in square 456, was worth anything like the sum of fifteen thousand dollars. He shows that the improvements are not permanently constructed, or in modern style, and that, considering the uncertainty and imperfection of the title, the sum of eight thousand dollars was, in the judgment of this respondent, the full value of the property, and as much as he was willing to give; and even this sum he would not have given, but for the purpose of securing the debt due him from the said John F. Callan.

Respondent is informed and believes that said John F. Callan had been endeavoring to sell the said property, and had been unable to find a purchaser at any price, on account of the uncertainty of the title.

Respondent utterly denies that "the statement in said deed of the consideration therein set forth having been paid is false," and "that the said deed was purely voluntary, and was designed to hinder, delay and defraud the complainant in the collection and recovery of his just debts, and has so delayed, hindered and defrauded him." And on the contrary thereof, respondent avers that the said conveyance was a bona fide transaction; that the consideration thereof was bona fide, being the surrender of said John F. Callan's note in favor of this respondent for four thousand dollars, and the payment in cash of nine hundred dollars, which said surrender and payment were not made in the presence of any other person.

Respondent admits that at the time of said conveyance to him said John F. Callan was largely indebted, but respondent knew not the extent of said indebtedness, or whether he was insolvent; and respondent supposed that he had a right, as a creditor of said John F. Callan, to obtain a preference over other creditors, and he utterly denies any intention on his part, and any knowledge or notice of any intention on the part of the said John F. Callan, to injure or to prejudice the rights of his creditors.

Respondent is not now aware, and was not aware on the 16th

October, 1854, that said John F. Callan then had any other property besides lot 8, in square 456, or that the deed of that date purported to convey any other property, not having particularly examined the same. He did not understand that he was acquiring any other property, and supposes the reasons for said provision in said deed were those set forth in the answer of said John F. Callan in this cause, to which answer he refers.

Respondent further shows that he has had no settlement with said John F. Callan for the rent of said property, and has forborne to demand such settlement because of the said John F. Callan's embarrassed circumstances; but that the said John F. Callan has paid the taxes and repairs on said property, and part of the interest due the estate of said Alice C. Jennings, amounting, as he is informed, to some $760, which is a charge against the rent due respondent for said property.

Respondent knows nothing of the other matters in said bill, and he prays to be hence dismissed with his reasonable costs, &c.

Without this, &c.

M. P. CALLAN.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this 31st day of August, 1857, before the subscriber, a justice of the peace in and for the county aforesaid, personally appeared Michael P. Callan, and made oath on the Holy Evangely of Almighty God, that the matters stated in the aforegoing answer as being within the defendants' knowledge are true, and that those not so stated he believes to be true.

Sworn to before me.

J. S. KENNEDY, *J. P.*

And thereupon the complainant, by his solicitor aforesaid, filed in court here a general replication to all the answers of said defendants in the words following, to wit:

The Replication of Austin Sherman, complainant, to the answers of John F. Callan and others, defendants.

This complainant, saving and reserving to himself all and all manner of exceptions, &c., for replication to the answer of said defendants saith, that he doth and will aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendants, and that the answers are very uncertain, evasive, and insufficient in the law, to be replied to by the repliant.

Without that, &c., &c.

CHILTON & DAVIDGE & INGLE,
For Complainant.

Thereupon said cause was regularly continued until the ninth day of March, one thousand eight hundred and fifty-eight, when the commissioner, Richard H. Clarke, esquire, filed in court here the following depositions, to wit: (Copied ante, page 23 et seq.)

And said cause by consent of said parties, by their solicitors aforesaid, were consolidated as per agreement, copied in page 155, and regularly continued until the thirteenth day of May, one thousand eight hundred and fifty-eight, when the court made the following decree:

STATHAM, SMITHSON & Co.
vs.
JOHN F. CALLAN and Michael P. Callan. } No. 1,165.—Chancery.

AUSTIN SHERMAN
vs.
JOHN F. CALLAN, Michael P. Callan et al. } 1,192.—Ib.

These causes standing ready for hearing, and having been consolidated by agreement of the solicitors for the respective parties, and submitted together, and the parties having been heard, by their respective solicitors, and the proceedings read and considered:

It is thereupon, this thirteenth day of May, in the year one thousand eight hundred and fifty-eight, by the authority of this court, adjudged, ordered and decreed, that the deed in the proceedings mentioned, (dated the sixteenth day of October, 1854,) from the defendant, John F. Callan, and Sarah A. Callan, his wife, to the defendant, Michael P. Callan, be and the same is hereby decreed to be fraudulent, and utterly null and void, as against the complainants and creditors, and that the property mentioned in said deed be sold. That Christopher Ingle and A. Austin Smith, of the city of Washington, D. C., be and they are hereby appointed trustees to make such sale, and the course and manner of their proceeding shall be as follows: they shall first file in the office of the clerk of this court their bond to the United States in the penal sum of twenty-five thousand dollars, and with a surety or sureties to be approved by this court or a judge thereof, conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them or either of them, by any future order or decree of this court in this cause. They shall then proceed to make sale of said property, having first given at least four weeks' notice by advertisement in the National Intelligencer and Union newspapers, of the time, place, and terms of sale; said advertisement to be published three times a week for said four weeks, and the terms of sale shall be as follows: one-third of the purchase money to be paid in cash, and the balance in two

equal payments, in six and twelve months from the day of sale; the deferred payments to bear interest, and to be secured by the bonds or notes of the purchaser, with a surety or sureties to be approved of by said trustees.

And the said trustees shall further, as soon as may be convenient after such sale, return to this court a full report of the same, with an affidavit of the truth of such report and of the fairness of such sale annexed; and upon the ratification of such sale by this court, and the payment of the whole purchase money, the said trustees shall convey the property sold, with all the right, title, interest and estate therein, of the parties to this cause, and every of them, to the purchaser or purchasers, and his, her, or their heirs and assigns; and the said trustees shall bring the proceeds of such sale into this court, to abide its future order.

And it is further adjudged, ordered and decreed, that, as against the defendants, Nicholas Callan, Mary Elizabeth Callan, Margaret Ann Callan, James Nicholas Callan, John Callan, Charles Constantine Callan, Rosalia Callan, Laura Callan, Clara Callan, Hellen Callan, Michael A. Guista, and Mary Ann Nalley, the bill of the complainant, Austin Sherman, be and the same is hereby dismissed, and that the said complainant pay the said defendants their costs of this suit to be taxed by the clerk.

By order of the court.

Test: JNO. A. SMITH, *Cl'k.*

Whereupon the defendants, John F. Callan and Michael P. Callan, by their solicitors aforesaid, pray an appeal from the judgment and decree of the court aforesaid to the Supreme Court of the United States, and to them the same is granted. Whereupon the said defendants, by their solicitors aforesaid, file in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Know all men by these presents, that we, Michael P. Callan, Nicholas Callan, and Samuel A. Peugh, are held and firmly bound unto Charles W. Statham, William T. Smithson, James G. Hamilton, and Austin Sherman, in the full and just sum of eighteen thousand dollars, lawful money, to which payment well and truly to be made and done we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 18th day of May, 1858.

Whereas, at the present term of the circuit court of the District of Columbia, sitting as a court of equity, for Washington county, in two certain causes, in one whereof the said Charles W. Statham, William T. Smithson, and James G. Hamilton, and in the other the said Austin Sherman, were complainants, and John F. Callan and Michael P. Callan were defendants, a decree was rendered

5201.

against the said defendants, and they having entered an appeal to the Supreme Court of the United States:

Now the condition of the above obligation is such, that if the said Michael P. Callan shall prosecute his appeal with effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

M. P. CALLAN. [SEAL.]
N. CALLAN. [SEAL.]
S. A. PEUGH. [SEAL.]

Signed, sealed, and delivered in presence of—
JNO. J. DYER,
JAMES N. CALLAN.

Filed 21st May, 1858.

(Approved by the court.)

Which bond being read and heard, and the surety in the same being approved of by this court, it is therefore ordered that the record and proceedings aforesaid, with all things thereto relating, be transmitted to the said Supreme Court of the United States, and the same are transmitted to the said court accordingly.

In testimony whereof, I, John A. Smith, clerk of the circuit court of the District of Columbia, for the county of [SEAL.] Washington, have hereunto subscribed my name and affixed the public seal of said court, this twentieth day of October, 1858.

JNO. A. SMITH, *Clk.*

Filed 13th December, 1858.